

THE SOUTHWESTERN SOCIAL SCIENCE QUARTERLY

Vol. XIII

DECEMBER, 1932

No. 3

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PUBLISHED QUARTERLY BY
THE SOUTHWESTERN SOCIAL SCIENCE ASSOCIATION
AUSTIN, TEXAS

"Entered as second-class matter January 10, 1921, at the postoffice at
Austin, Texas, under the Act of March 3, 1879"

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THE QUARTERLY*

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THE DEVELOPMENT OF STATE CONTROL OF HIGHWAYS IN TEXAS

BY FRANK M. STEWART

The University of Texas

Highway legislation and administration in the American states follows certain fairly definite trends. In the earliest period of road building the system of local management by counties and townships, with the forced labor system, prevailed. Limited state supervision, with a policy of grants-in-aid, introduced in New Jersey in 1891, spread rapidly, and by 1913, only six states, including Texas, had failed to provide for state participation in road building. Under this policy initiative in road improvement generally remained with the county, with the state approving projects and supervising the construction. It may be designated as a county system with state aid. A second stage in highway administration reveals the establishment of a more rigid system of state control, the state usually letting the contract and supervising construction directly, with the county's funds often turned over to the state. Assumption by the state of complete responsibility for the construction of a state system of highways under exclusive state control and with independent state funds, represents the next step in administrative development. A final step, transfer to the state of responsibility for the financing, construction, and maintenance of all county highways, has been established by recent legislation in North Carolina and Virginia.¹

Federal participation in road building, inaugurated in 1916, has with increasing contributions and Federal supervision,

¹*Public Laws and Resolutions*, North Carolina, 1931, ch. 145. The Virginia law provides that after July 1, 1932, county highways will become the secondary system of state highways. Any county may hold an election to determine whether or not it shall withdraw from the provisions of the law. Cf. Harold I. Baumes, "Virginia Moves to Reform County Government," *Public Management*, v. 14; 170 [May, 1932].

greatly influenced the development of state control, has stimulated the progress of construction and coördinated state systems into a national system of highways.²

Highway administration in Texas has passed through several of the general stages recorded above. The development of centralization of authority in the hands of the state department, by means of constitutional amendment, court decisions, legislation, and administrative practice, the causes and the results thereof, together with the influence of Federal aid road legislation will be set forth here.

Highway Law of 1917

The law creating the highway department vested its administrative control in a highway commission of three citizens appointed by the governor and senate for a term of two years. The state highway engineer, elected by the commission, was given the right to sit with the commission in an advisory capacity without vote. To the commission was given the duty of formulating "plans and policies for the location, construction and maintenance, in coöperation with the counties of the State or under the direct supervision and control of the State Highway Department, of a comprehensive system of State highways and public roads. . . ."³

Assistance and advice to county and city officials in road building and maintenance was required. One of the duties of the department was to collect information and statistics regarding the mileage, character and condition, and cost of constructing different classes of roads in the counties, to determine the best methods of road construction adapted to the different sections of the state, and to establish standards for the construction and maintenance of highways, bridges, and ferries. County and city officials might consult the department with reference to their highway problems and the department was required to supply all available information. Likewise the department might call upon such officials for any information required for the performance of its duties.

²T. R. Agg and J. E. Brindley, *Highway Administration and Finance*, chs. 2, 3 (1927). I have also had the use of a manuscript chapter on "Highways" prepared as a part of a study for the President's Research Committee on Social Trends under the supervision of Professor L. D. White of the University of Chicago.

³35th Leg., reg. sess., *General Laws*, 416-427 (1917).

Before spending any money derived from the sale of bonds or other legal obligations issued by a county, or by any subdivision or defined district of any county for road purposes, it was made the duty of the commissioners' court or other road agency to obtain all of the available information and advice from the department relative to road construction and maintenance suitable to the county or district concerned. Upon such request the department was directed to advise concerning general plans and specifications for road construction.

The adoption of rules to determine the fitness of engineers making application for highway construction work and the recommendation of competent engineers for appointment by any county, road district, or city making application, was a further duty placed upon the department. The commission was also to make rules and regulations for the conduct of the work of the department and for the determination of weights governing license fees for commercial vehicles.

The state highway engineer was given the duty of preparing a comprehensive plan providing a system of state highways, the construction of which the commission was to advance in coöperation with the counties or under the control of the department, as the necessary construction funds should be available. A copy of the department's plans of state highways was to be furnished to each county commissioners' court in the state.

A complete road map of the state showing road construction of the various counties, revised to keep pace with construction progress was to be prepared under the direction of the highway engineer and kept in the office of the department. County road maps in duplicate showing the location of all public roads within the county and the location at the county lines of connecting roads of all adjoining counties, were to be prepared under the direction of the commissioners' court of each county within a year after the highway act became effective. One of the county road maps was to be filed in the county clerk's office and the other with the highway department. Together with the county road map the commissioners' court should furnish the highway department with a statement of the location in the county and extent and availability of all road building materials. In case of failure of the county to furnish such map and information on materials to the department the state highway engineer was authorized to have such maps and information prepared under his supervision and the expense should be deducted from the first allotment to

the county of funds derived from registration fees of motor vehicles.

It was also made the duty of the commissioners' court of each county to designate such roads as they deemed best to represent part of an adequate system of state highways to the various market and business centers of the state and connecting the principal traffic centers. If the public roads of any two adjoining counties representing a necessary part of the system of state highways failed to connect, the highway engineer was to report to the commission and the commission was to notify the commissioners' courts of the counties concerned, what work was needed to complete the connection of the state highways. Failure of a county to make such connection within six months after notice empowered the highway engineer to complete the connection. The expense of such work was to be deducted from the county's allotment of funds from the registration fees of motor vehicles.

The laboratories of The University of Texas and of the Agricultural and Mechanical College were placed at the direction of the highway engineer for testing and analyzing road and bridge material, and it was made the duty of those in charge of the laboratories to cooperate with and assist the highway engineer.

State prisoners might be used in construction or maintenance work on designated state highways upon such terms as might be agreed upon by the highway commission and the prison commission and approved by the governor.

In order to provide funds to effectuate the provisions of the act, every owner of one or more motorcycles or motor vehicles was required to file in the office of the state highway department an application for registration of each motorcycle or motor vehicle owned or controlled by him, and to pay the requisite fee therefor. Upon registration of a vehicle the owner received a certificate of registration, a distinguishing seal and two number plates for a motor vehicle and one for a motorcycle.

All funds derived from registration fees or other sources were to be deposited with the state treasurer to the credit of "The State Highway Fund," to be expended under the direction of the commission for the furtherance of public road construction and the establishment of a system of state highways. Semi-annually one-half of the gross collections of registration fees received from the counties was to be remitted to the county treasurer in the counties from which collections were made. The fees so remitted were to constitute a special fund to be expended by or under the direction

of the commissioners' courts of the counties in the maintenance of the public roads of such counties in accordance with plans approved by the highway department.

State aid to counties in the construction of roads was provided for in the following section of the act: "Whenever the commissioners' court of any county shall desire, and is prepared, to construct one or more miles of public roads constituting a part of the system of state highways as designated by the department, such court may make application for an allotment of state aid from the state highway fund, and if such application is accompanied by plans, profiles and estimates prepared in accordance with the requirements of the state highway engineer, the commission shall file such application in the order in which it is received; and when such roads shall be constructed according to specifications and under the supervision of the highway engineer, the commission shall make an allotment of aid from any moneys available in the state highway fund. . . ." Such aid was not to exceed one-fourth of the cost of construction nor was it to assist in constructing more than ten miles of road in any county during any year.⁴ In counties financially unable to construct their part of necessary state highways with such assistance, the commission might increase the allotment of state aid not to exceed one-half the cost of constructing not more than ten miles in one year. State highways constructed with state aid were to be maintained at the expense of the county in which located, in accordance with plans approved by the highway department. Failure to maintain such highways would result in forfeiture of any further state aid until the maintenance work was done.

Federal funds for public road construction in Texas were to be expended by and under the direction of the highway department only upon a part of the system of state highways.

⁴In April, 1918, the legislature amended this part of the law as follows: "Provided, that the aggregate sum contributed by the State to aid in building roads in any one county during any one year shall not be in excess of the whole cost of ten average miles of such road." 35th Leg., 4th called sess., *General and Special Laws*, 158 [1918].

In 1923 it was provided by law that the allotment of state aid for the construction of a section of a state highway should not exceed one-half of the cost of construction. 38th Leg., 2nd called sess., *General Laws*, 71 [1923].

Methods of Road Building Under 1917 Law

The state highway act passed in 1917 contemplated the construction of a system of durable highways and placed the responsibility of developing such a system upon the highway commission. Federal aid appropriations from the first were much greater than the state aid derived from the registration of motor vehicles. Hence to meet Federal aid funds available for allotment it became necessary for the counties to vote bond issues. Thus instead of using state and county funds to match Federal funds, the commission was compelled to use its funds in augmenting the Federal funds in matching the county money as far as possible. Both Federal and state funds proving insufficient to match on a 50-50 basis the funds voted and furnished by the counties, the department had to rely on the counties to furnish the greater portion of the money used in the construction of state highways.⁵

The method of securing allotment of state aid in the period before 1925 may be summarized as follows: A county wishing to improve a section of a state highway had to vote bonds in order to raise its share of the funds. The commissioners' court then employed an engineer, whose appointment was subject to the approval of the highway department. Under the supervision of one of the division engineers of the highway department the county engineer made the necessary surveys and prepared plans and estimates in accordance with regulations prescribed by the highway department. An application was then submitted by the commissioners' court to the highway commission for either state or Federal aid on the project. If sufficient funds were available and the project appeared favorable, the commission generally granted aid either state or Federal, or both, within the limitations prescribed by the state and Federal laws. The county was then authorized to advertise for bids on the work and to award the contract with the approval of the highway department. Construction work was done under the direction of the county engineer,

⁵For 1917 and 1918, \$2,407,233.23 state aid and \$4,323,980.40 federal aid was allotted to the counties; for 1919-1920, \$1,681,382.68 state aid and \$11,294,481.86 federal aid; total for the four years: state aid, \$4,088,615.91; federal aid, \$15,618,462.26. Bonds voted by counties and road districts for road and bridge purposes in the same period totaled \$95,244,799.90. State Highway Commission, *Biennial Report*, v. 1: 12, 13, 32-33, 47 [1917-1918]; v. 2: 7, 29, 90-92 [1918-1920].

subject to the general supervision and acceptance of the work by the highway department through its division engineer. Payments were made monthly by the county to the contractor and the state reimbursed the county for work actually done upon estimates approved by the division engineer. On Federal projects the United States Government reimbursed the state for the amount paid the county by the state. Maintenance of highways after completion was placed upon the county in accordance with an agreement entered into with the highway department at the time state aid was granted.⁶

This policy of local initiative in highway construction based upon a combination of local, and state and Federal funds, while not satisfactory in its results was adopted at first on account of financial, constitutional, and legislative limitations, and has continued until the present, although many former constitutional and legislative limitations have been removed, mainly as a consequence of necessary compliance with Federal legislation.⁷

Federal Aid Highway Legislation

The establishment of the Office of Road Inquiry, which later became the Bureau of Public Roads of the United States Department of Agriculture, and the passage of the Federal Aid Road Act of 1916 furnished a powerful stimulation to highway legislation in Texas.⁸

Under the provisions of the act of 1916 the secretary of agriculture was authorized to coöperate with the state highway departments in the construction of rural post roads. For this purpose \$75,000,000.00 was appropriated. After deducting not to exceed three per cent of the appropriation for any fiscal year for expenses of administration the secretary of agriculture was directed to apportion the balance of the appropriation among the states on the following basis: one-third in proportion to the mileage of post roads (rural delivery routes and star routes) in the state as computed by the United States Postoffice Department, one-third in proportion to the area of the state, and one-third in proportion to the population of the state.

⁶State Highway Commission, *Biennial Report*, v. 2: 7-8 (1918-1920).

⁷ For a critical discussion of this policy, see Leonard Tillotson, "Our Highway Problem, *Bunker's Monthly*, v. 2: 504-518 (Oct. 1928).

⁸See W. S. Holt, *The Bureau of Public Roads* (1923).

Before any Federal aid money could be spent in a state, the state legislature had to assent to the provisions of the act and a highway department had to be established. Roads upon which Federal aid might be spent should be constructed in accordance with plans approved by the department of agriculture, under the direct supervision of the state highway department and subject to the inspection and approval of the secretary of agriculture. The Federal contribution for any road was limited to \$10,000.00 per mile. Maintenance of the roads was made the duty of the state or its civil subdivisions.⁹

By the Post Office Appropriation Act of February 28, 1919, an appropriation of \$200,000,000.00 for additional Federal aid was made to be spent in accordance with the provisions of the Federal Aid Road Act. This act also broadened the definition of "rural post roads" and increased the amount of Federal contribution from \$10,000.00 to \$20,000.00 per mile.¹⁰

Amendment to the Federal Aid Road Act of 1916, approved November 9, 1921, changed many of the features of the original Federal aid plan. A new policy was adopted on the location of the roads that could receive Federal aid. Each state, through its highway department, had to select or designate a system of highways in the state not to exceed 7 per cent of the total road mileages of all classes of the state as shown by the records of the highway department at the time of the passage of the act. Federal aid appropriations were to be limited to this system until it had been completed. The seven per cent system was to be divided into two classes (1) primary or inter-state highways and (2) secondary or inter-county highways. The primary system should not exceed three-sevenths of the entire system, and the secondary system, which must connect or correlate with the primary system, should consist of the remainder of the mileage which might receive Federal aid.

The secretary of agriculture was given authority to approve in whole or in part the systems as designated or to require modifications or revisions thereof. Not more than 60 per cent of the funds allotted to the state could be expended upon the primary system until provision had been made for the improvement of the entire system of such highways, provided that more than 60 per cent could be used in any one year with the joint approval of

⁹39 Stat. L., 355 (1916).

¹⁰40 Stat. L., 1200 (1919).

the secretary of agriculture and the highway department. Whenever a state had provided for the construction and maintenance of the 7 per cent system additional road mileage could be added to the system whenever funds were available.

The secretary of agriculture had to approve the type and width of construction, reconstruction, and character of maintenance of roads, giving consideration to the needs of each locality.

If a state failed to maintain a road constructed from Federal aid funds, the secretary of agriculture, after a ninety-day notice, was to let a contract for such needed maintenance and was to charge the cost against the Federal funds allotted to that state. No further projects might be approved until the state had reimbursed the Federal Government for such expenditure. The money refunded by the state should be appropriated to the road fund of all the states.

Before the secretary of agriculture approved any project the state had to provide state funds for construction, reconstruction, and maintenance of Federal aid highways within the state, all of which funds had to be placed by the state under the direct control of the state highway department.

In the definition of state funds were included all funds raised under the authority of the state, or any political or other subdivision thereof, and made available for expenditure under the direct control of the state highway department.

In states where the existing constitution or laws would not permit the state to provide revenues for the construction, reconstruction, or maintenance of highways, the secretary of agriculture was to continue to approve projects for the state until three years after the passage of this act, provided the state had complied with the provisions of the act in so far as its existing constitution and laws would permit.¹¹

Movement to Change the State Constitution and Laws

At the time of the passage of the Federal Highway Act of 1921, the Texas Constitution and laws apparently vested authority over highways in the counties. That act made imperative a change in the state's policy, if Federal aid was to be continued. Before November 9, 1924, the state had to make such changes in her constitution and laws so as to vest exclusive control over the state

¹¹42 Stat. L., 212 (1921).

system of highways in the state highway department.¹² Immediate action was necessary to comply with the requirements as to maintaining the roads partially constructed with Federal funds. While counties which had constructed roads with the assistance of Federal aid were under contract with the State to maintain them, some were not fulfilling their contracts on account of financial limitations. The state being without funds for maintaining state highways the failure of a single county to maintain its portion of a state highway on which Federal funds had been expended would furnish grounds for the Bureau of Public Roads to withhold its approval of any more Federal aid projects. Such a result would penalize every progressive county in the state.¹³

In commenting on the danger of losing Federal aid, Mr. R. M. Hubbard, chairman of the state highway commission, pointed out that there was another good reason why the legislature should provide an adequate state fund for both construction and maintenance of state highways. It "lies in the fact that until those funds are provided, we will make very little headway in the construction of a connected state system. The people of Texas certainly desire such a system, and every day the demand grows greater and greater. We really have been, and are still building county, not state roads, that only constitute a part of the state system; and until they are connected, they cannot rightfully be termed a state road."¹⁴

Texas Highway Association.—Facing the crisis of losing Federal aid a group of about 300 interested citizens met in the senate chamber of the state capitol in Austin on April 17, 1922, and organized the Texas Highway Association. Governor Pat M. Neff addressed the meeting and declared that he strongly favored good roads, and wished to see the passage of legislation which would enable the state to meet the provisions of the amended Federal Highway Act. He called upon the organization to work out a comprehensive road building program for the state and promised that if this were done he would devote much of his time during the coming summer to carrying the program of the association

¹²The time was later extended to five years from November 9, 1921, and an amendment of 1925 granted an additional three years for compliance. 42 Stat. L., 660 [1922]; 43 Stat. L., 889 [1925].

¹³*Texas Highway Bulletin*, v. 2 (Nov., 1922).

¹⁴*Idem.*

before the people of the state.¹⁵ Mr. W. V. Crawford of Waco was elected president of the association, and the election of a secretary was left to the directors, who were scheduled to hold on May 13 their first meeting in Waco, selected as headquarters of the association for the first year. Vice-presidents and directors of the association included more than a score of prominent men, representative of different sections of the state. A constitution and by-laws were adopted and standing committees were appointed.

At the meeting of the board of directors in Waco on May 13, several changes in the personnel of the vice-presidents and board of directors were made. A declaration of purposes of the organization was adopted; it was decided to incorporate the association and to require a \$10,000.00 bond of the secretary. A budget of \$50,000.00 for the first year was adopted, the funds to be raised through individual membership and contributions.¹⁶

On June 26, 1922, another directors' meeting was held at Waco. Means of raising the budget of \$50,000.00 were discussed. The chairman of the finance committee reported on funds received and disbursed and submitted a statement of more than \$3,000.00 in the treasury. Secretary-Treasurer Wheeler had been authorized to open an office in Fort Worth, his home city. All committees reported showing progress of work. A legislative committee was appointed with Judge Hugh L. Small of Fort Worth, chairman; Leonard Tillotson, Sealy; Clifford B. Jones, Spur; Robert J. Potts, Waco; Cone Johnson, Tyler; and Howard Bland, Taylor. The committee was to work out a detailed plan of suggestions to the legislature of the state, and was to report to a meeting of the directors to be held in Galveston on August 3. A meeting of the association was called in Galveston for August 4 and 5 for consideration of the entire program of the association.¹⁷

Nearly four hundred persons attended the meeting in Galveston on August 4-5, including the Federal district engineer, the state highway engineer, and members of the state highway commission. President Crawford addressed the convention on the growth and work of the association since its organization in April. The legislative committee reported its recommendations and a legislative

¹⁵*Texas Highway Bulletin*, v. 2 (April, 1922); *Austin American*, April 18, 1922.

¹⁶*Waco Daily Times-Herald*, May 13, 14, 1922.

¹⁷*Ibid.*, June 26, 27, 1922.

program was adopted. Plans were made for a campaign of education to arouse the citizens to the necessity of adopting such a program.¹⁸

A joint committee meeting composed of delegates from the County Judges and Commissioners' Association and the Texas Highway Association was held in Waco on October 4. The legislative program on highways was considered and the county officials endorsed the program of the Texas Highway Association.¹⁹ The highway commission also approved.

As finally agreed upon by the board of directors and the legislative committee at a meeting in Waco on December 21, the program of the association submitted to the Thirty-eighth Legislature included, among others, the following specific recommendations:

1. A constitutional amendment giving the state the power to designate, construct, operate, control, and provide for the maintenance of a state system of public highways.

2. A constitutional amendment providing a state highway commission of three members appointed by the governor for a term of six years, one member to be appointed every two years.

3. Reimbursement to counties for improvements made by such counties on state designated highways.

4. Enactment of a practicable and constitutional headlight law.

5. Adequate penalties for violations of the highway laws.

6. Payment by all motor vehicles of a license fee of fifty cents per horsepower and also a graduated fee according to the weight of the vehicle.

7. Payment by commercial motor vehicles above 3½ tons of a high license fee, ranging from \$3.00 to \$5.00 per hundred pounds.

8. Levy of a tax of two cents per gallon on gasoline, the proceeds to go into the state highway fund for the building and maintaining of state roads.²⁰

The publicity campaign of the association emphasized that the principal reason for the existence of the association was:

To obtain the necessary legislation to enable the State Government to cooperate with the Federal Government in constructing a connected state system of highways in Texas, and to remove the

¹⁸*Galveston Daily News*, August 4, 5, 6, 1922; *Texas Highway Bulletin*, v. 2 (Aug., 1922).

¹⁹*Texas Highway Bulletin*, v. 2 (Dec., 1922).

²⁰*Ibid.*, v. 3: 12 (Jan., 1923).

legal obstacles which stand in the way of full compliance by Texas with the requirements of Federal law in the matter of Federal aid for highway construction.²¹

Literature of the association called attention to the fact that Texas received more Federal aid than any other state in the Union; that the state system of highways proposed for Texas embraced 12,000 miles, constituting only seven per cent of the total post road mileage of the state; and that it would be impossible to construct and maintain this system of highways under the present system. Although between 2,000 and 3,000 miles of highways had been built in Texas with Federal aid since 1917, there was not a single unbroken stretch of improved highways of 100 miles. This method of building roads must be changed: first, because a connected system could never be built and maintained in this way, and, second, because the Federal Government had demanded that it be changed if Federal aid was to be continued. Two things must be done to meet the situation: first, the state government must be given the authority to build and maintain the highways; second, the state must be provided with adequate revenue, chiefly raised from traffic over the roads, to meet Federal aid and maintain state highways.²²

That the association's appeal for support of its program was successful is evidenced by its claim that it had more than 1,000 active members and a large number of sustaining members. Indorsements of its program had come from state and local civic organizations, chambers of commerce, banks, county commissioners' courts, and similar bodies. The Democratic State platform, adopted at the state convention in San Antonio, urged upon the legislature the enactment of legislation in accordance with the program advocated by the association.²³

Highway Legislation.—The Thirty-eighth Legislature which assembled in Austin in January, 1923, before its adjournment in March, passed several very important measures relating to highways.

1. The term of office of members of the highway commission was extended from two to six years, beginning February 15, 1925, with one member to be appointed by the governor every two

²¹Texas Highway Association, *Facing the Texas Highway Crisis* (1923).

²²*Idem.*

²³*Idem.*

years. Compensation of the commissioners was increased not to exceed \$2,500.00 per year.²⁴

2. License fees for motor vehicles were increased so as to help provide funds to match Federal aid and to maintain roads upon which state and Federal aid was used, about three-fourths of which was to go to the highway department. The same law contained a section authorizing the highway commission on or after January 1, 1924, to take over and maintain all state highways. The proceeds from the automobile registration fees were to be set aside as a fund available for the maintenance of state highways under the direction and control of the highway commission.²⁵

3. An occupation tax of one cent per gallon was levied upon wholesale dealers in gasoline; three-fourths of the funds derived from the tax were to go to the highway fund for the construction and maintenance of state highways, and one-fourth to the available public free school fund.²⁶

4. A proposed amendment to the constitution authorizing the state to take over the construction, operation, and maintenance of a state system of public highways was ratified by the legislature for submission to popular vote on July 28, 1923.

The Legislature is authorized and directed to provide for the creation, establishment, construction, maintenance, and repair of a system of improved highways throughout the State to be under the control of the State; and in order that the State may provide the means, revenues, and instrumentalities, the establishment and maintenance of such a system of highways, the Legislature is empowered to levy and cause to be collected specific excise and ad valorem taxes, in addition of those permitted for other purposes in the Constitution, but such an ad valorem tax shall be imposed only for the purpose of retiring the bonds authorized by vote of the people of this State as provided for hereinafter in this Section.

When said system shall have been designated and taken over for the State as provided in Section A hereof, the Legislature is authorized to make provision for the equitable compensation to such counties for the value of such improvements as have been heretofore constructed by the counties in the State.

Provided, also, that save for the State highway system, in all other respects, counties shall have the right to build, construct and maintain roads, turnpikes, and bridges within their respective

²⁴38th Leg., reg. sess., *General Laws*, 325-326 (1923).

²⁵*Ibid.*, 155-162.

²⁶*Ibid.*, 275-277.

boundaries, and the constitutional provisions relating thereto are not qualified or repealed by reason hereof.²⁷

The friendly attitude of the Thirty-eighth Legislature was much in contrast to that of its predecessor two years previously which had assumed a critical attitude toward the highway department. Credit for this change was given largely to the Texas Highway Association.²⁸ Holding its first annual convention in Dallas on April 20-21, 1923, the association reviewed past achievements, elected officers, appointed committees, and made plans for the work of the association for the coming year. The governor, lieutenant-governor, speaker of the house, the members of the highway committees of the house and senate, as well as the entire membership of both houses, were praised for their progressive attitude toward highway legislation. Special attention was given to the problem of conducting an educational campaign for the adoption of the constitutional amendment on July 28.²⁹

In the midst of the campaign for the adoption of the amendment the attorney-general ruled that the amendment could not legally be voted upon on July 28. A provision in the constitution requires a proposed amendment to be published in a newspaper in each county once a week for four consecutive weeks, beginning at least three months before the election. The highway amendment was not mailed to the newspapers for publication until after June 4. In response to an inquiry from the secretary of state, the attorney-general ruled that the provision of the constitution was mandatory, and that failure to comply with it exactly was fatal, and the election if held would be null and void.³⁰

Although much disappointed by the failure to secure adoption of the constitutional amendment the highway commission, through chairman R. M. Hubbard, announced that it would "carry on." The result would have no effect upon the funds of the highway department for the next three years; the existing program of highway construction and maintenance would not be disturbed; unexpired federal appropriations, including those for 1924 and 1925 would not be endangered. The department would continue to cooperate with the various counties of the state in the construction of state highways, but on a larger scale due to the additional funds provided by the Thirty-eighth Legislature. Ample

²⁷*Ibid.*, 450-451.

²⁸*Texas Highway Bulletin*, v. 3: 14, (April, 1923).

²⁹*Ibid.*, v. 3: 9, 24 (May, 1923).

³⁰Attorney-General, *Biennial Report*, 1922-1924, 168-186.

time yet remained to make the necessary adjustments in the state constitution and statutes, as the amended Federal Highway Act allowed the states until November 9, 1926, to comply with its provisions. There was still opportunity for the Thirty-ninth Legislature in January, 1925, to submit a more carefully drafted amendment to the voters.³¹ This became unnecessary due to a decision of the state supreme court.

Judicial Construction.—One of the acts of the Thirty-eighth Legislature directed the state highway department, on or after January 1, 1924, to take over and maintain all state highways. The state's share of the automobile registration fees was set aside as a maintenance fund. Counties were to be relieved of all cost or supervision of the maintenance of state highways and were authorized to use the 17½ cent horsepower tax apportioned to them on any county roads as they desired.

Several counties refused to turn over to the highway department the balance of automobile license fees collected after deducting the county's share. In Limestone County, suit was brought by the county, road district no. 15 of the county, and six residents of the district and county, to enjoin the tax collector of the county from paying the tax on motor vehicles to the highway department. Injunction was granted by the district court, and appeal was taken to the court of civil appeals at Waco. Upon certified questions to the supreme court, associate justice Pierson delivered the unanimous opinion of the court in favor of the appellants, members of the state highway department.³²

The controlling issue in the case, the court said was the relation of the state to the public roads, whether title and ownership of the public roads was in the counties and road districts of the counties and under the control of the commissioners' courts, or was in the state. Appellees asserted that title and ownership was in the counties and road districts and subject to the control of the county commissioners' courts and that the act of the Thirty-eighth Legislature (ch. 75) violated the bill of rights of the state constitution and the fourteenth amendment to the United States Constitution in that the state, through the highway commission, deprived Limestone County, and road district no. 15, of their property without due process of law and denied them the equal protection of the laws.

³¹*Texas Highway Bulletin*, v. 3: 9, (Aug., 1923).

³²*Robbins v. Limestone County*, 268 S.W. 915 (1925).

Emphatically the court rejected the doctrine that the public roads within the borders of a county were its property, and that title and control were inherent in the county. "In their very nature and as exercised by the general sovereignty they belong to the State. From the beginning in our state the public roads have belonged to the state, and not to the counties." "Public roads are state property over which the state has full control and authority."

In the past, under authority of law, the county was authorized and charged with the construction and maintenance of the public roads within its boundaries, yet it was for the state and for the benefit of the state and its people. The state having the function of establishing public highways, the legislature had the right to establish them, and, unless the constitution forbids, it may exercise that right direct or by and through such agencies as it may designate. "The exercise of this right by a political subdivision of the state, or by local officers, is founded upon statutory authority therefor."

The decision was favorably received by the press of the state and particularly by those who sponsored a system of connected state highways. The *Texas Highway Bulletin* pronounced it "one of the greatest ever made in favor of the good roads movement in Texas."

It is important, among other reasons, because, it states clearly that the ownership of the roads is vested in the state; it upholds the recent laws passed by the legislature giving the state authority to maintain the highways; it prevents a return to the county as the principal unit of control which would be to retard highway development in Texas indefinitely, and it makes it possible for the legislature to go ahead with other important legislation planned for the improvement of the state system of roads, one phase of which is conformity to the requirements of the national government so that we may continue to receive Federal aid.²³

Highway Act of 1925.—The completeness of the decision in the Limestone County case disposed of all necessity for a constitutional amendment to give the state control over highways. The Thirty-ninth Legislature, in session at the time the opinion was rendered, promptly took steps to pass the necessary legislation to bring Texas practice and procedure into conformity with federal requirements. The act of 1925 established a new policy for highway construction and maintenance.

²³*Texas Highway Bulletin*, v. 5: 14 (Feb., 1925); *Ibid.*, v. 5: 15, 38 (March, 1925).

State control was provided by the following section:

All further improvement of said state highway system with Federal aid shall be made under the exclusive and direct control of the State Highway Department and with appropriations made by the Legislature out of the State Highway Fund. The further improvement of said system without Federal aid may be made by the State Highway Department either with or without county aid. Surveys, plans, specifications, and estimates for all further improvement of said system with Federal aid or State aid shall be made and prepared by the State Highway Department. No further improvement of said system shall be made under the direct control of the commissioners' court of any county unless and until the plans and specifications for said improvement have been approved by the State Highway Engineer.

It was provided, however, that nothing in the act should be construed as prohibiting the granting of state aid under the provisions of the highway law of 1917 and its amendments, nor should anything in the Act prevent the completion of any highway improvement project already begun or the carrying out of any contract for such improvement.

All moneys in the state treasury belonging to the state highway fund, including Federal aid moneys and all county aid moneys should be subject to appropriation for the specific purpose of improving the system of state highways by the highway department.

County coöperation in the building of state highways was permitted through the furnishing to the highway department of "county aid." The commissioners' court of each county was authorized to aid the construction and maintenance of any section of a hard-surfaced road in the county constituting a part of the state highway system and to enter into contracts or agreements with the highway department for that purpose. "County aid" was defined as any money in the available road fund of the county or any political subdivision or defined district thereof appropriated for the purpose of granting such aid.

The cost of all improvements of state highways made with county aid were to be paid out of the state highway fund, and the county or road district in which the improvement was made was to reimburse the fund in amount as might be agreed upon between the highway department and the commissioners' court of the county. County aid was to be paid to the highway department for deposit in the treasury to the credit of the state highway fund in partial payments as the work progressed. Such county aid was to be paid by warrants issued by the county clerk

and countersigned by the county judge and approved by the commissioners' court upon accounts of the highway department certified by the highway engineer.

The new law designated as the "State Highway System" all highways included in the plan of a system prepared by the highway engineer as required by the original highway act of 1917.

Other sections of the 1925 law provided for competitive bidding on all contracts for the improvement of any highway constituting a part of the state highway system or for materials to be used in the construction or maintenance of a state highway. Details regarding such bids, the contractor's bond, the form of contract, signing of contracts, partial payments, and condemnation of right of way and materials were also covered in the act.³⁴

In reply to inquiries from the highway department and from county officials, the attorney-general interpreted the highway act of 1925 as follows:

1. The state highway commission must let contracts on state designated highways where Federal aid moneys are involved.

2. When state aid is granted to a county without any Federal aid the county has authority to let the road contract on state designated highways provided the plans and specifications for the improvement have been approved by the highway engineer.

3. In case the highway commission makes an allotment to a county and at the same time makes an agreement that the county is to grant county aid, the highway commission lets the contract.

4. Where county aid is granted by the commissioners' court to the highway department the money could be set aside in the county depository under an agreement not to release it except upon the proper order of the highway department on approved certified accounts. It could then be paid directly to the state highway fund.

5. The highway department has authority to make road contracts only out of the money in the state highway fund. County aid may be granted to augment the state highway fund and the highway department has authority to use such county money in making state contracts in that county, but the state highway commission is not authorized to let county contracts.

6. Granting of county aid to the state is voluntary and discretionary on the part of the commissioners' court.

³⁴39th Leg., reg. sess., *General Laws*, 456-459 (1925).

7. The highway act of 1925 does not expressly repeal any prior statutes. There is still state aid to counties as provided in the 1917 law and amendments. Under this plan contracts may be let by counties themselves subject, however, to the plans and specifications being approved by the highway engineer.

The distinction between Federal, state, and county aid, and methods of letting contracts was clearly set forth in the opinions.

County aid to the State is where financial assistance is granted by a county to the State Highway Department to improve state designated highways. State and Federal aid is the granting or setting aside of State and Federal funds to aid counties in the building of roads in the county which is being assisted. Where Federal funds are involved it practically means that the county aid method must be used, since we have held that only the Highway Commission can let contracts where Federal aid is involved. Where no Federal funds are to be used and State aid is granted, without any reservation as to who shall let the contract, the county lets the contract. This is State aid. If the Highway Department is to let the contract involving only State and county funds the county must set aside a certain amount to be paid into the State Highway Fund as provided in Section 7 of the Highway Act. This is county aid.³⁵

Summary and Conclusion

Surveying the development of highway administration in Texas in the past fifteen years one notes the absence of a state road policy and the lack of any state agency in the period before 1917. Road building was in the hands of the several county commissioners' courts and a unified program of highway building on a state-wide plan was entirely lacking. From this stage of independent and uncorrelated control of county highway programs under the sole control of county officials, the state passed in 1917, when a state highway department was established, into a second stage, one of limited supervision of local authorities. In 1925, a third stage was begun which has continued to the present time. During this period the state has assumed direction and control of the construction and maintenance of all state highways. Authority has been given to the state department to construct a state system of highways without dependence upon the counties. County funds are still used to supplement state and Federal aid,

³⁵ Attorney-General, *Biennial Report*, 1924-1926: 265-269, 276-280.

but control is in the state department. The next few years will probably witness a final stage in highway development in Texas, the construction of state highways with independent state funds with no part of the cost being borne by the counties.³⁶

Along with these centralizing tendencies in highway legislation have come changes in the technique and methods of administrative supervision. No central control existed before 1917. The original highway act of 1917 provided a commission with somewhat wide supervisory powers over local officials. The department was evidently intended to become guide, counsellor, and friend to the county officers. The law made it the duty of the commission to formulate plans for a system of state highways in coöperation with the counties; to give assistance and advice to county and city officials; to supply all available information and advice to local officials, who might consult the department relative to road matters. Upon request the department should advise concerning plans and specifications for road construction. Rules to determine the fitness of engineers should be adopted and competent engineers recommended for appointment by the local authorities upon application of the latter. A system of state aid to the counties was provided to be paid from funds derived from a registration fee on motor vehicles.

Operating methods under the 1917 law left the initiative in road building in the hands of the county officials. Engineers were employed by the county subject to the approval of the highway department. Surveys, plans, and estimates were made by the county engineer and in accordance with regulations prescribed by the highway department. Advertising for bids and awarding of contract was done by the county with the approval of the highway department. Construction was directed by the county engineer subject to the general supervision of the highway department. Maintenance of highways after construction was in the hands of the counties.

Since 1925 control over both construction and maintenance of highways has been vested by law in the state department. Authority exists for the state department to build state highways

³⁶The Highway Commission announced at its meeting on July 2, 1932, discontinuance of the policy of accepting county aid for road improvement. Whether this represents a permanent policy or a temporary one due to current economic conditions remains to be seen.

without local funds. There is no longer "state aid" to the counties but "county aid" to the state. Coöperation between the state and county still exists but the preparation of plans, awarding of contract, construction and maintenance of state highways are done by the state department with its own agents or under its supervision. The county's part consists in furnishing certain "county aid" to the state, and a free unobstructed right of way. Initiative is still left largely to the counties in asking for state designation of roads and for funds for improvement of highways, and county officials have the right to be consulted about routing and location.

In seeking causes for the transfer of responsibility for highway construction and maintenance from local to state control, the stimulation furnished by Federal aid legislation must be given first mention. The act of 1916 practically forced the creation of the state highway department in 1917 and subsequent legislation accelerated the movement to place exclusive control over highway improvement with the state department. Realization of the impossibility of ever building a connected system of state highways under the provisions of the 1917 law, which permitted the existence of gaps in state highways in counties unable or unwilling to vote bonds for the improvement of state highways within their borders, also contributed powerfully to the centralization movement. The tremendous sums of money that were being invested in roads, parts of which were undoubtedly wasted under county control with its lack of capable administrators and technical assistance, stimulated greatly this development. Other contributing factors were the desire for continuity of highway administration and for increased funds for highway improvement to be secured from state sources and not from county bonds.

The immediate result of the movement initiated by the Texas Highway Association in 1922 was the establishment of state control in 1925, thereby insuring the continuance of federal aid. The lengthening of the term of the highway commissioners followed by improved administrative methods and personnel policies, the provision for increased funds for highway improvements coupled with the introduction of a new accounting procedure, may be counted also as achievements of the movement to modernize road administration in Texas in accordance with the best standards and practices developed by other states and the Federal government.

Other benefits of a technical nature which have resulted from Federal coöperation and from centralization of state authority include: standardization of road plans and specifications, improved methods of testing, more uniform standards of designs for roads and bridges, the exchange of information with reference to construction methods, and the pooling of the results of investigation and research.

TWO YEARS OF FARM RELIEF IN LOUISIANA

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When the month of June, 1930, brought a siege of dry, hot weather that was to develop into an unprecedented drought in the lower Mississippi Valley, fields and orchards were left with little more vegetation than they had in the late winter. That portion of Louisiana north of Alexandria was particularly hard hit. If one draws on a map of the state a line from Natchez, Mississippi, and Vidalia, Louisiana, westward to Alexandria, and projects it on to the Texas line, he will find twenty-eight of the sixty-four parishes of the state north of this line, comprising what may properly be called the drought area of 1930.

On farms in this area live approximately 50,000 families, about half of whom are colored. Close to 1,500,000 acres had been planted in cotton when the dry weather came; about 400,000 acres were in corn, something less than 60,000 acres in hay, and probably not over 50,000 acres in vegetables, soy-beans, potatoes, and corn all told.¹ Practically three out of four acres in cultivation were in cotton. The degree to which one-crop farming had developed is shown by the fact that the average amount of land planted in vegetables, corn, and potatoes, or devoted to orchards, did not exceed one acre per family. The hay and feed crops of that year would not likely have supported the 200,000 head of livestock of this region, even with an abundant yield. Dairying, the only other form of farm production, was not important and is hardly more so at the present time.

During the three months ending August 31, 1930, the average rainfall of the 16 government stations of the Weather Bureau in this sector was 3.75 inches, an amount which is only 33.2% of normal rainfall.² As a consequence, corn production averaged

¹These figures are taken from the report of the Secretary of the State Drought Relief Committee, Mr. D. W. Thomas, to whom the writer is indebted for the records of state relief.

²The drought was broken by general rains on August 18, 19, and 20, 1930. For the period from June 1 to August 18, the mean rainfall at these stations was 2.53 inches. The normal mean rainfall for these stations for the three-months period, June 1-August 31, is 11.31 inches, but for this period in 1930 was only 3.75 inches.

about two bushels per acre, compared with fifteen bushels in a normal year. In some parishes cotton produced one bale to nine and ten acres, where usually one bale would be produced on three acres. Many a farm did not raise one bale on twenty acres; in many cases no effort was made to pick the cotton at all, so scant was the yield.³

The state's efforts to care for its drought-stricken communities are noteworthy. In the latter part of August, Governor Huey P. Long called a meeting of farm-agents, bankers, and representative leaders in community life throughout northern Louisiana to meet in Ruston, in the heart of the distressed area, to consider steps for the relief of needy farmers and planters. This group of persons was designated the State Drought Relief Committee and met on August 20, 1930, for its first session. An executive committee, appointed at that time and headed by B. F. Thompson, of Alexandria, immediately began a survey to ascertain actual farm conditions and needs. Subordinate drought relief committees were appointed in each parish by police juries,⁴ and in some few instances by parish school-boards, and by the State Committee.

The State Drought Relief Committee distributed 100,000 questionnaires to farmers, to be filled in with a statement of their personal needs. At its first meeting the Committee requested a legislative appropriation of \$5000 with which to defray committee expenses. Upon the recommendation of the State Board of Liquidation, the legislature immediately authorized the expenditure. At the same time, the Executive Committee expressed its belief in the inability of the state to handle the situation, and went on record as endorsing federal aid.

Early in September the same committee endorsed a proposal to organize local agricultural credit corporations (authorized under

³Cf. statement of B. F. Thompson, Chairman, State Drought Relief Committee, *Congressional Record*, December 1, 1930, page 8. This reference probably overstates the case. The Bureau of the Census shows that in 1928 cotton production in these 28 parishes was 523,450 bales; in 1929, 610,131 bales; in 1930, 473,496 bales; and in 1931, 650,948. Thus, the 1930 crop was 77.7 per cent of the previous year's crop, and 70.3 per cent of the 1931 crop. "Cotton Production in the United States," Crop of 1930; Crop of 1931. U.S. Department of Commerce.

⁴The police jury in Louisiana is the governing board of the parish or county, and corresponds to the board of commissioners of the county, as observed in most states.

the Agricultural Credits Act of 1923). Particular stress was placed on the possibility of relief from this source by the Extension Department of the United States Department of Agriculture, the State University Department of Agriculture, and the State Farm Bureau.⁵

A resolution, directed to the Interstate Commerce Commission, sought lower freight rates temporarily to and from the drought district.

Meanwhile, the State Relief Committee asked the National Red Cross to give food, and seeds for planting fall pastures and gardens, to the 32,000 families in need. In mid-September the Red Cross commenced the distribution of free garden and oat seed, with headquarters in Monroe. It was only through this organization that food and feed were available to many farmers and their livestock before the Federal government's loans were made available in January, 1931.

⁵No action ever followed the proposal. Chairman Thompson, in reporting on November 20, 1930, to the assembly at Washington, called by the Secretary of Agriculture for a discussion of prevailing drought conditions among the states, stated that "we have some farmers who are able to take care of themselves in the drought area, and some . . . who are not able to take care of themselves. The banks were very frankly asked if they could carry the situation. After a review of the situation, a resolution was passed (Shreveport, October 31) saying that they were unable to cope with the situation with the collateral the farmers had to offer.

" . . . We believe the only security the small, independent farmer has to offer is a background of honesty, successful farming, and a reputation for paying his debts, and the only thing he has to offer is the hope of a crop in 1931, and if he stays on at home and makes a crop, he has got to have help. Our banks say they can't give it. We tried to organize a credit corporation. We find that the small merchant, the credit merchant, has all his funds tied up in this year's crop. He can't go to the bank and borrow money. If we could get the intelligent farmer to work closely with the credit corporation, the extension department, and the Farm Board, I believe it would be the most helpful thing for Louisiana agriculture. It is a matter of education and of overcoming prejudices. Most of the people are suspicious of any organization that comes along to offer help unless there is something in it for the other fellow. I do not think we can depend upon the credit corporation for our help in Louisiana." *Congressional Record*, December 1, 1930, page 8.

The following table shows the nature and extent of relief afforded to Louisiana drought sufferers by the Red Cross from September 15, 1930, to June 30, 1931.^a

<i>Supplies or Services</i>	<i>Value</i>	<i>Number of Families Given Aid</i>
Food _____	\$734,508.19	71,860
School Lunches _____	18,630.35	10,354 (children)
Clothing _____	34,891.75	10,960
Medical Aid _____	4,537.23	1,441
Garden and Field Seed (1930) _____	51,310.42	13,121
Garden Seed (1931) _____	30,711.09	53,200
Miscellaneous _____	80,864.62	
Total _____	\$955,453.65	

By the middle of October, 1930, local credit was so extended as to make local farm credit organizations out of the question. On October 17 the State Committee sought two other sources of relief, though still reiterating its request for aid from the Federal government. One was a request for a special session of the legislature, from which an appropriation might be asked, to be used as a relief fund. The other was a resolution urging the governor and the chairman of the State Highway Commission to let contracts providing for construction of farmers' highways, with the stipulation that local people be employed in construction work. The legislature, however, was not convened; and a state law, specifically requiring all road contracts to be awarded to the lowest bidder, irrespective of place of residence, prohibited any help from a public works program.

On December 1, 1930, the McNary-Aswell bill was introduced in Congress, originally calling for an appropriation of \$60,000,000 from the United States Treasury, to be loaned to farmers in distress. In its amended form the resolution provided for loans to drought-stricken farmers, and was enacted into law on Decem-

^aThis table is supplied through the courtesy of Robert E. Bondy, manager of the Eastern Area, American Red Cross. Undoubtedly there is duplication in the number of families given food. The number estimated by the Executive Committee of the State Relief Committee is 30,000 families. This figure is probably very nearly accurate. Miscellaneous items include transportation of drought sufferers, fuel, household goods (mostly bedding), family service, and sundry operating expense. A large part of the medical aid consisted of supplying yeast to combat pellagra.

ber 20, 1930.⁷ By January 9, 1931, all forms and necessary machinery to advance funds to farmers wishing to borrow, had been prepared by the Secretary of Agriculture. By the middle of January, representatives of the Department of Agriculture had set up headquarters in the various parish seats to receive applications for loans.

Essentially, these applications included a balance sheet of the applicant's business, his crop production for 1929 and 1930, and the names of the dealers to whom his crops were usually sold, together with a statement of the personnel of his family. Of particular interest are two closing paragraphs of the application: "If this application is granted, I agree to use such seed, fertilizer and methods of farming as are approved by the Department of Agriculture, through its local representatives. I further agree to plant a garden for home use, and a sufficient acreage of feed to supply my livestock. I also agree to report to the Department of Agriculture how I have spent the money loaned to me for crop production, and if requested, will report the average yield per acre of each crop grown by me from seed and/or fertilizer purchased from the proceeds of this loan. . . . I agree to use said loans in purchasing seed of the varieties mentioned for planting for the growing season of 1931."⁸

⁷Resolved . . . "That the Secretary of Agriculture is hereby authorized, for the crop of 1931, to make advances or loans to farmers in the drought and/or storm-stricken or hail-stricken areas of the United States, where he shall find that an emergency for such assistance exists, for the purchase of seed of suitable crops, fertilizer, feed for work stock and/or fuel and oil for tractors, used for crop production, and when necessary to procure such feed, etc. . . . and for such other purposes incident to crop production as may be prescribed by the Secretary of Agriculture, and sell the same to such farmers. . . A first lien on all crops growing or to be planted and grown during the year 1931 shall, in the discretion of the Secretary of Agriculture, be deemed sufficient security for such loan, advance, or sale. All such loans, advances, and sales shall be made through such agencies as the Secretary of Agriculture may determine. For carrying out the purposes of this resolution, including all expenses and charges incurred in so doing, there is hereby authorized to be appropriated the sum of \$45,000,000; provided that loans be made available for the summer following in 1931."

A penalty for making false representation in order to secure such a loan carried a maximum fine of \$1000 or a maximum jail sentence of six months. Public Resolution No. 112, Seventy-first Congress.

⁸Form No. 2, Farmers' Seed Loan Office (Memphis), U. S. Department of Agriculture. On the application was a statement of purposes for which proceeds of the loan would be used. Accompanying it was a promissory note

It will be immediately noticed that the farmer was subjected to the control of the parish farm-agent, as representative of the Department of Agriculture, as to methods of cultivation, quality of seed used, and types of crops. Emphasis was especially placed upon the planting of supplementary crops to take care of farm needs.

On February 14, 1931, a supplementary loan of \$20,000,000 was authorized by Congress, to be used: "(1) to make advances or loans to individuals in the drought and/or storm or hail stricken areas for assisting in forming local agricultural credit corporations, livestock loan companies, etc.; and (2) to make advances to farmers for crop production for 1931 and for further agricultural rehabilitation in the drought areas."⁹

Because of the urgent need of placing these funds within reach of the farmers, a local loan committee was set up to check on the amount of loan sought by each borrower, and a parish loan committee was likewise created to check on loans over each parish. Loans were hurriedly approved. Sentiment in some instances served as a better guide than did sound business judgment. Furthermore, some planters applied for larger amounts than necessary for the purposes designated in the applications, for here appeared an easy source of money to tide over the general depression.¹⁰ Instances have been found where persons asking for loans believed they would never be asked to repay them. One farm-agent avers that, in hundreds of cases, the loan was the first cash the farmer had ever had with which to make a crop, and naturally he knew very little about how to borrow or how to spend it. It follows then that there were abuses of the government's kindness, a fact readily acknowledged by numerous persons helping in the placing of the loans.

The elements were as kind to Louisiana agriculture in 1931, as they had been unkind in 1930. Fruits, vegetables, hay, pastures, corn, and cotton were produced in abundance. When the government's August 8th cotton report was released, an estimate of over

for the amount of the loan sought, a chattel mortgage upon all the crops to be grown, and a voucher form properly signed.

⁹Public Resolution No. 666, Seventy-first Congress, commonly known as the Agricultural Rehabilitation Act.

¹⁰The writer has been told of one case where the proceeds of a loan to a planter having a number of tenants that he had promised to finance, were used to buy a \$2000 tractor.

16,000,000 bales of American cotton veritably knocked the bottom out of the cotton market. By September 1, when cotton in this area began to come on the market, spot cotton was selling under 6c per pound in New Orleans.

Now since the government had a lien on every growing crop of the borrower, it could take whatever quantity of crop, up to the entire production of each borrower, was necessary to satisfy the mortgage. All loans were due not later than October 31. In the latter part of that month, cotton at inland points was selling well under 5c. When the loans were made in the early spring, middling cotton was around 8c per pound, and it was in contemplation of this price that acreage and expenditures had been planned, and money borrowed. Several farm agents have estimated that not more than 20% of the farmers could have repaid their loans from the sale of the 1931 cotton crop alone. To have collected the loans in full would have necessitated the government's exercising its lien on feedstuffs, as well as cotton, so that in so far as productive resources for 1932 were concerned, the status of the farmer would be just about the same as in January, 1931, when the Red Cross was assisting him.

Furthermore, there would not have remained a marketable commodity for the borrower to have realized on, in order to make possible the payment of his taxes, and provision for clothing his family for the winter. In short, the farmer appeared to have little more to show for his 1931 crop than the actual experience of crop-production, plus some additional indebtedness.

In the latter part of October, however, the United States Department of Agriculture, in coöperation with the American Cotton Coöperative Association, agreed to accept cotton at any designated warehouse, bonded by the Federal government, if it were consigned to the Coöperative Association for sale and the proceeds from its sale assigned to the Government. Cotton so assigned to the Association was to be placed in a special marketing pool, and the government was to allow an immediate temporary credit of 8c per pound on the grower's obligation to it. This pool was to extend for a period of six months, or until such time as a favorable market price would permit the sale of the cotton so deposited.¹¹ A carrying charge of approximately 35c per bale

¹¹A base rate of 8c was set on middling cotton of $\frac{3}{8}$ -inch staple. A structure of price differentials was built upon this base, to allow for deviations in grade and staple. The principal quotations were these:

per month was deducted by the government from the credit allowed.¹²

Since cotton at inland points was not selling above 5c per pound during September and October, the Department's ruling was in effect an extension of 3c per pound on all loans against which cotton was deposited with the Coöperative Association.

Before the time came for the extended loans to be liquidated, the Reconstruction Finance Corporation Act was passed, early in 1932, authorizing an additional loan of \$50,000,000 to farmers in need, whether as a result of former drought conditions or of generally depressed prices. The errors of 1931 obviously prompted the Department of Agriculture to observe more rigorous administrative rules for placing cotton loans. When the Department was asked by the Reconstruction Finance Corporation to use the same set-up for placement of loans as used in 1931, the Department immediately issued new regulations through the Seed Loan Office in Memphis, governing all loans on southern agriculture. Some of them are of particular interest in crop-control which the Department sought to achieve:

1. No loans for crop production in 1932 will be made to any applicant who has a means of livelihood other than farming, or to a minor.
2. No loans will be made to any applicant in excess of \$400. The total amount of loans to the tenants of any one landowner in a single county shall not exceed \$1600.

Grade (Color and Cleanliness)		Staple (Length)			
		$\frac{11}{8}$ "	$\frac{7}{8}$ "	$\frac{13}{8}$ "	1"
Strict Middling	_____	7.85c	8.25c	8.65c	9.05c
Middling	_____	7.50	8.00	8.40	8.80

Probably 75 per cent of the 1931 crop graded strict middling, and it is estimated 50 per cent was $\frac{7}{8}$ -inch staple. This was an exceptional situation, because of the favorable growing season. Typically, most cotton of this section will grade middling, with a $\frac{11}{8}$ -inch staple.

¹²Specifically, this cotton was placed in a "Seed Loan Pool," in the Louisiana Cotton Coöperative Association, the affiliate of the American Cotton Coöperative Association. A charge of \$1.25 is made as a handling fee, unless the cotton is sold within 30 days after delivery. At inland points a storage fee of 25c per month per bale is made. Insurance premiums amount to 5c per month per \$100 valuation. Interest is charged at 5 per cent on advances made until such time as the cotton is ordered sold. In the Seed Loan Pool a member was permitted to sell his cotton at his option and pay the difference between the collateral value of the cotton and the 8c credit allowed him. Needless to say, no such sale has occurred to the writer's knowledge.

3. No loan will be made to any applicant who did not operate a farm in 1931.

4. No loan will be made for summer fallowing.

5. Loans will not be made for a total acreage of crops in excess of the average acreage planted in 1930 and 1931.

6. Loans will not be made for the purchase of machinery or livestock . . . or for payment of taxes, debts, or interest on debts.

7. No loan will be made to any individual . . . to assist in financing the planting of an acreage of cotton or tobacco in excess of 65 per cent of the acreage of such crop planted in 1931. . . This provision does not apply to farmers planting less than 10 acres.¹³

A ruling of the Department of Agriculture permits proceeds of the loans to be used for feed, seed, and fertilizer, and for miscellaneous production expenses, not to exceed \$1 per acre.¹⁴

Of interest is the fact that most of the borrowers for 1932 had not paid the 1931 loans, other than by the mere deposit of their 1931 crop with the Coöperative Association, which, in the light of current market quotations at the time of borrowing in 1932, still left approximately 40% of the 1931 debts unpaid. The government was in the unhappy predicament of being unable to collect on the basis of the 1931 crop and, at the same time, had made no provision for financing the 1932 crop, from which payment might be expected. It did the only thing possible under the circumstances. It extended the 1931 notes to November 30, 1932, and permitted the Reconstruction Finance Corporation to take a prior lien on the 1932 crop.¹⁵ Much of the government's lien was lifted when prices in the early fall of 1932 reached 8c, allowing the 1931 crop to be sold at the original credit extended by the government. The very conservative loans made by the Finance Corporation will quite probably be collected in full. It placed 26,352 loans in Louisiana, aggregating \$2,472,373, or an average of \$93.80.¹⁶ The loans were placed with extreme care and are based on a contemplated price of 4c per pound in October. In 1931 the Department of Agriculture, for the government, made 25,596 loans, totaling \$3,223,280, averaging \$125.90.¹⁷

¹³*Monroe (La.) News-Star*, March 2, 1932.

¹⁴*Ruston (La.) Leader*, April 9, 1932.

¹⁵Cf. Federal Crop Pledge for Louisiana, U. S. Department of Agriculture, Form No. 4r.

¹⁶*Shreveport Journal*, June, 1932.

¹⁷Of these loans, 15,831 were for seed, feed, and fertilizer; the remainder for agricultural rehabilitation (i.e., for replacement of any depleted farm assets arising from the drought). That there may be an over-statement of

Thus it is that the United States government has poured into this state in the past two years almost six million dollars of agricultural working capital. Now the result of this injection of outside capital into productive farm channels must be closely examined to determine whether to the body of agriculture it is a transfusion of very necessary life-blood or only a narcotic stimulus that will leave its strength undermined. Stated otherwise, will the lending of two to three millions of dollars to farmers of this state enable them to become more firmly established to meet subsequent contingencies in times of distress, or will the present situation lead them to expect continuing government support? Admitting that sufficient capital could not have been attracted to this section in 1931 to tide over the dilemma, one is at first inclined to the view that the entire affair has been an example of the protective function of government, which might attend any widespread calamity.

Nevertheless, to arrive at definite conclusions, certain farming practices and conditions existing prior to 1930 in this section must be noticed. Many tenant farmers were accustomed to receiving food and supplies during the growing season as advances against the sale of their cotton to the merchant in the autumn. The merchant accepted either a chattel mortgage on the growing crops or the verbal pledge of the grower's crop. In turn, the merchant advised the farmer as to what crops to plant, and in what quantities. The merchant kept the farmer's accounts, crediting the farmer with the proceeds of the sale when the crop was sold or consigned to the merchant. Thus the merchant, and the banker, who supplied money instead of merchandise, became integral parts in the whole machinery of crop management.

With the utmost respect for the integrity of these two businesses, it may be said that such a practice is not conducive either to diversified farming or crop-rotation where typically there is but one money-crop, that is the crop that a creditor expects to be

the number of loans for 1931 is suggested by Mr. J. H. Lynch, directing the Farmers' Seed Loan Office, Memphis, in referring to number of loans by parishes: "The number of loans shown under Seed, Feed, and Fertilizer loans, and the number shown under Agricultural Rehabilitation loans, do not show exactly the number of farmers to whom loans were made for the reason that a joint application was used. This application, of course, was only to one farmer, but shows in the statement in each column. As a general rule, the number of loans for each parish would be about midway between the number shown for seed, feed, and fertilizer, and the total for the two."

raised, so that accounts may be converted into cash. But that which is good merchandising or sound banking procedure is not necessarily good farming practice. Feed and food for farm-consumption were coming through the local store instead of being raised on the farm, a condition certainly not without profit to the merchant; but a failure of the cotton crop or a drop in market price left the farmer absolutely stranded, for he had no other crop on which to rely for funds.

Doubtless, as a by-product of this system, is that practice which is locally known as the "hog-round" method of grading cotton for market. Stated tersely, this practice makes no distinction between the various staple or fiber-lengths. Within general limits, all cotton of the same degree of cleanliness and color sells at the same quotation.

Such a practice, in itself, has led to a vicious cycle which removed all incentive or opportunity to improve the cotton-staple. Why, reasoned many a planter, should better seed be used at a fancy price, when my neighbor gets the same price for a poorer staple? Many a local creditor, interested in store-keeping and not cotton-marketing, has never learned to grade or classify staple, and has paid a flat price on all cotton which he has received for market. This situation has largely prevented this section, typically producing upland cotton, from developing a profitable staple. The planter has passed the blame to the buyer or factor, and the latter has blamed the planter, for the short staple.

So, except in a few "river" parishes along the Red and the Mississippi, cotton-farming in northern Louisiana, which produces around 80% of the total cotton in the state, may be characterized prior to 1930 as being rooted largely in a one-crop system financed principally by local merchants and bankers, and producing a short, mediocre staple, marketed through local independent buyers and factors who often gave no individual classification per bale, and who just as often made payment by advances of merchandise and provisions. This is not to say, of course, that there were not numerous large planters, entirely self-financing and following a plan of systematic crop-improvement. But they were in the minority, and, rather than representing the general tendency in cotton-farming, actually emphasized the prevailing methods by not pursuing them.

A glance at the conditions imposed upon the borrower in securing his loan, previously cited, shows how revolutionary in

this whole scheme of affairs was the government's policy. From a complete *laissez faire* policy, the government has attempted judicious control of every phase of cotton-farm management. A pledge in favor of the government, executed on the farmer's entire crop, was required as security for the loan.¹⁸ This removed all local finance-control. Furthermore, in the case of a tenant, an agreement was required of the owner of the land, releasing the owner's lien against the growing crop, which he held at law to secure his share as rent-payment. In case of mortgagees who had established prior liens, a similar agreement was exacted from them.¹⁹

Of just as much importance as finance-control are the provisions giving crop-control to the parish farm-agent. How far this power has been exercised is a matter of conjecture. Expressions of opinions on this point have been obtained from either the parish farm-agent or the secretary of the parish drought-relief committee in 24 of the 28 parishes in the drought district. The unanimous response is that, as never before, during the fall and winter of 1931-32, there was feed, home-raised food, cured meat, canned fruits and vegetables, corn and small grains in the farmers' cribs and cellars.²⁰ Three emphatic views on this topic

¹⁸If the borrower "shall fail to care for and protect said crop in a good and husbandlike manner until fit for harvest, the agents (of the government) . . . may take the necessary measures for the protection of said crop, and may retain possession thereof. If (the borrower) shall fail to make the payment as provided, then (the government) may take possession of said crop and may immediately proceed to sell the same in the manner prescribed by law." Form No. 4-A, Farmers' Seed Loan Office (Memphis).

¹⁹Form No. 7, *Ibid.*

²⁰It has been indeed disheartening to find parish farm agents who explained that there were no government requirements to diversify, other than to plant sufficient feed and food for home consumption. Without wishing to quibble over words, the position of the writer is that the clauses in the loan application, "I agree to use such seed, fertilizers, and methods of farming as are approved by the Department of Agriculture" and "I agree to report how I have spent the money" place the farmer under the control of the parish farm agent. It would appear as if the government were content in simply protecting its loans, regardless of the economic implications within its powers, that would permit rational agricultural planning and technology. One rejected application for a loan, now in the writer's possession, for \$123 to raise six acres of corn and peas, fifteen acres of peanuts, and three acres of truck and gardenstuff (no cotton) carries the recommendation from the Seed Loan Office of the Department of Agriculture: "We suggest that the applicant revise his crop schedule so that it will include the cash crop of the section in

are of interest. The first is that the prospect of facing sheer hunger and deprivation, and not government requirements, is the cause of diversification of crops. The second is that diversification is only temporary. One farm-agent maintains that "high prices will bring back cotton again as a sole crop"; another laconically holds that it will last only "until cotton reaches 15c per pound again." And the third view taken is that there can be no real diversification until another money-crop is discovered.

There is also the possibility of acreage-control. The 1932 requirement explicitly limits the cotton acreage of the individual borrower to 65% of his cotton acreage in 1931. Essentially, this compels some form of diversification, since it is not likely that the remaining 35% of last year's acreage will be permitted to lie idle. The difficulty of enforcing this provision is well-nigh insurmountable, as witness the actual acreage as reported by the Crop Reporting Board of the Department of Agriculture, as of July 1. Acreage for the state was only 10% less on that date than on the corresponding date in 1931.²¹ The 25% discrepancy is hardly to be explained by increased acreage of non-borrowers. The gist of the matter is that the Department has not enforced its ruling. When it is recalled how excited the southern states were during the fall of 1931 on this very issue, the lack of interest or concern in acreage reduction through administrative edict seems to bear mute testimony to the efficacy of legislative publicity in any form of economic control.

As a further step in guidance of agriculture in this section by the Department of Agriculture is the marketing-control imposed in the Department's handling of credit allowances on loans, through the Louisiana Coöperative Marketing Association. Though the Coöperative Association has been functioning successfully for several years, the prevailing custom of marketing cotton through the financing merchant had prevented the great majority of farmers from aligning themselves with it. It is possible that there were many who knew little of its activities. When the Department of Agriculture chose to handle cotton as collateral on extending the loans, through the facilities of the Association, it brought large numbers of farmers into direct contact with the organization for the first time. The warehouse

which he farms." Obviously the Department of Agriculture has been fully aware of its ability to dictate kinds of crops.

²¹*Commerce and Finance*, July 13, 1932.

receipt issued by the Association at the time the cotton was consigned by the debtor-grower to the Association stated that "in consideration of the original contract between the grower and the Association, the grower hereby assigns all the net proceeds which would otherwise belong to him arising from the sale of that part of the cotton covered by the contract, to the mortgagee (Department of Agriculture) and authorizes the Association to make all remittances covering any such proceeds to said mortgagee."

Now there was no original contract existing between the Association and the grower prior to the ruling of the Department in October for the very simple reason that grower membership in the Association was comparatively small. So the grower had to choose between paying his loan outright with 5c cotton, the prevailing price, or entering into a marketing contract with the Coöperative Association in order to receive the 8c credit. The latter alternative was chosen almost unanimously.

The high-spots of this agreement are five in number, and may well be examined in appraising the results of the loan.

First, "The Association agrees to buy and the grower agrees to sell and deliver to the Association all the cotton produced, acquired, or controlled by or for him in Louisiana during the next ten years immediately following the date of execution of this agreement . . . subject to the withdrawal privilege." (Art. 2-A.)

"The grower may, by his voluntary act, withdraw from the Association at any time between January 1st and March 1st prior to the beginning of any crop year . . . provided he shall notify the Association in writing by registered mail of his intention so to do." (Art. 2-B.)²²

Second, "The Association shall make rules and regulations to govern the classing, grading, handling, pressing, and shipping of the cotton; and the grower agrees to observe such rules and regulations." (Art. 4-C.)

Third, "The Association shall establish seasonal pools, monthly pools, and may establish other optional pools. . . ." (Then follow the trading rules of the Association.)

Fourth, "If the grower places a crop lien upon any of his cotton, the Association shall have the right to pay off the crop lien for the account of the grower and to charge the same against him individually and to take delivery of the cotton." (Art. 14-B.)

²²The words "crop year" as used in this agreement mean from the first day of August in any calendar year to the last day of July in the next calendar year. (Art. 2-D.)

Fifth, "Should the grower fail to sell and deliver all his cotton to the Association, the grower hereby agrees to pay to the Association for all cotton delivered other than in accordance with the terms hereof, the sum of 5c per pound as liquidated damages for the breach of this contract."

This contract now assures the grower of a fair classification of his cotton, and at the same time, permits him to sell his cotton to his advantage. It is hoped and believed that this opportunity for orderly marketing will serve to prevent his withdrawal from the Association.

Besides the phases of control over finance, variety of crops, acreage, and marketing outlets, which the government has exerted over cotton-production, there are numerous benefits accruing to the individual producer. Farm-agents point out that a coöperative spirit has been engendered through membership in the Coöperative Association. Better seed will probably be used. More interest will be taken in developing a staple that will command a premium. Already many more farmers are interested in classifying staple, because of the lesson learned from the differential credits allowed by the government on various staples this past fall. The lesson of living at home, *i.e.*, raising much feed and food for home consumption, has been pretty thoroughly taught. Budgeting of cash paid out for supplies is as important.

But much yet remains to be done if the government is to effect any kind of permanent solution for the problems of the Louisiana cotton-farmer. Acreage restrictions have not been observed. Unless the government continues to repeat these loans, advancing them at planting time and collecting them at harvest, their influence can hardly be more than short-lived. Concensus of opinion among farm-agents closely in touch with credit needs is that the loans from some sort of revolving fund should be maintained for at least five years, in order to help the farmer accumulate sufficient working capital to raise his crops independently of mercantile credit. Some substitute crop for cotton must be found to prevent the dangers attendant upon one-crop farming. Thus far there has been little effort in this direction when cotton prices are high. When cotton prices are low, prices of other farm commodities are correspondingly low, making it extremely difficult to introduce new crops successfully.

Of especial concern of the moment is the problem of the 1931 loan, still unpaid. Unless the price of cotton advances to 8c, the amount credited on the 1931 loan, quite probably part of the

proceeds of the 1933 crop will be used to pay 1931 debts. As it is now, the position of the government is that of the speculator, holding commitments against a market upswing.

Finally, if the government should elect to supply working capital for the next few years, it must justify its position in the minds of many local merchants and bankers. There are those who feel that the government is usurping their functions of supplying credit. Yet if rationalization of production and diversification of crops can be achieved, it undoubtedly will be accompanied by more ready capital, and inure to the benefit of these groups.

Tenant-farming, as at present conducted, is highly unprofitable, and presents an economic problem that must increasingly call for this section's best thought. Whether working capital supplied by the government will help either the tenant or the landowner is problematical.

Certain it is that the next few years seem to mark a transition period in cotton-farming in Louisiana. The government's part may be only paternalistic, but let it be hoped that it develops cotton-farming on a sounder economic basis.

AMERICA'S FIRST CONSULAR CONVENTION

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America was for more than a century and a quarter peculiarly unfortunate in its experience with consular conventions. The first was signed with France on November 14, 1788;¹ the stipulations were, however, observed with increasing difficulties, and general satisfaction was felt when it was abrogated on July 7, 1798.² The next treaty was signed on May 4, 1850 with New Granada,³ followed on February 23, 1853 by a second convention with France.⁴ The latter exempted consuls from arrest and thus became the source of trouble.⁵ But agreements delimiting consular rights appeared necessary in certain instances and the one signed with Italy on February 8, 1868⁶ was considered to incorporate fewer evils than any of its predecessors and remained the model⁷ until 1923 when the treaty of friendship, commerce, and consular rights with Germany⁸ superseded it.⁹ But of all the conventions signed by the United States, probably the most interesting in every respect is the first.

The treaty of amity and commerce between the United States and France signed February 6, 1778, provided for the appointment of consuls, vice consuls, and commercial agents by each in the ports of the other, but stipulated that their duties and privileges be specified in a particular convention.¹⁰ On the following

¹Malloy, *Treaties and Conventions of the United States*, printed as Senate Document Vol. 47, 61st Cong., 2nd sess., 1909-1910, I, 490. Jefferson announced the conclusion of the agreement in a letter to Jay dated November 14, 1788, *Dip. Corr. of U. S.*, 1783-1789, II, 193.

²Wharton, *Digest of International Law*, I, 777.

³Malloy, I, 314.

⁴*Ibid.*, 528.

⁵Secretary Fish to Mr. Bassett, October 18, 1872, MSS. *Instructions*, quoted in Wharton, *Digest of International Law*, I, 778.

⁶Malloy, I, 961.

⁷Fish to Bassett, cited above.

⁸Treaty Series No. 725.

⁹*American Journal of International Law*, XIX, 553, editorial comment by Arthur K. Kuhn.

¹⁰The 29th article reads: "The two contracting parties grant mutually the liberty of having each in the ports of the other Consuls, Vice Consuls, Agents, and Commissaries, whose function shall be regulated by a particular agreement." Malloy, I, 478.

March 28, without waiting for the ratification of the treaty, Louis XVI commissioned Conrad Alexander Gerard minister plenipotentiary to the Continental Congress and consul general for the territory subject to its jurisdiction, with power to appoint consuls and vice consuls.¹¹ The American commissioners at Paris promptly urged their government to follow this example in so far as it pertained to consular agents¹² but Congress failed to appreciate the need for a separation of the consular from the diplomatic functions. However, in order to lighten their burden the commissioners were authorized on February 9, 1778, to appoint commercial agents.¹³ This did not serve the purpose and the original need was repeatedly urged.¹⁴ Meanwhile the French industriously sought a greater share of the American trade, and consuls frequently clashed with state officials. Their assumption of authority in Massachusetts led that state on February 23, 1779, to ask Congress to define the powers that might be exercised by foreign consuls in American ports.¹⁵ This was a delicate subject and caution was the first requisite in dealing with it since the sensibilities of some states might be aroused.¹⁶ But it was recognized that by treaty each of the nations had granted the other the right to appoint consuls in their ports and provided that their functions be regulated by a special agreement. Therefore, it seemed wise to arrange with the minister of France the details of the powers and privileges to be permitted consular agents.¹⁷

Gerard welcomed this action but found those charged with the negotiations unwilling to follow his directions therefore he determined to transfer the business to other hands. On June 21, he appealed directly to Congress asserting that the lack of "proper

¹¹Gerard's commission as consul general is given in Wharton, *Rev. Dip. Cor.*, II, 522. His instructions appear in the same volume on page 523.

¹²Franklin to Lloyd, February 1, 1779; Adams to Committee of Commerce, May 24, 1778.

¹³*Journals of the Continental Congress*, X, 139.

¹⁴Jay to the President of Congress, March 3, 1780, Wharton, III, 530. Franklin to the President of Congress, March 4, 1780, Wharton, III, 534.

¹⁵*Journals*, XIII, 391.

¹⁶*Ibid.*

¹⁷The committee's report said: "That as by the 31st article of the treaty of commerce, it is provided, that the two contracting parties grant mutually the liberty of having each in the ports of the other, consuls, vice consuls, agents, and commissaries, whose functions shall be regulated by a particular agreement, it seems necessary that persons be appointed by Congress to adjust and settle with the Minister Plenipotentiary of France the powers and privileges of consuls in the ports of either nation." *Journals*, XIV, 696.

regulations for maintaining the immunity of the flag" was prejudicial to French commerce.¹⁸ He called attention to the provisions in the treaty for a consular convention and said that he would have long since pressed the subject had the sovereign body not been occupied with matters of greater importance, but the evils were becoming more burdensome to his countrymen and he now urged that provisional regulations be agreed upon immediately.¹⁹ This maneuver failed,²⁰ Congress could not sanction the extension of authority to the degree desired by France.

The Confederacy felt little need for a convention regulating the functions of consuls since it had no such officials. To be sure William Palfrey was given a commission on November 4, 1780, and ordered to France,²¹ but was lost at sea enroute.²² On June 26, 1781, Thomas Barclay was selected to discharge his duties²³ but did not enter upon the task until October 3, 1782.²⁴ France, however, had continued to desire a treaty and on July 27, 1781, Caesar Anne de la Luzerne, who had succeeded Gerard as minister to Congress, reopened the question in a short memorial accompanied by a draft of a consular convention.²⁵ He again directed attention to the treaty provision which reserved to the contracting parties the liberty of stationing consuls in each others ports, their functions to be regulated by a subsequent agreement, in consequence of which he said the court at Versailles had caused the draft to be made.²⁶ The king wished the plan put into operation at once, and if any of the provisions were not wholly acceptable such changes as were deemed advisable could be made. There was no universally accepted form for consular conventions but this draft incorporated the principles of absolutism which France wished to establish. A measure of this character was sure to

¹⁸*Journals*, XIV, 760; Gerard's letter to the President of Congress, but not the "annexed plan" which he mentions, is printed in Wharton, III, 228.

¹⁹Wharton, III, 228.

²⁰*Journals*, XIV, 760.

²¹*Journals*, XVIII, 1019.

²²Johnson, E. R., "The Consular Service, 1776-1792," *Political Science Quarterly*, March, 1898, XIII, 19.

²³*Journals*, XX, 698.

²⁴On that date Vergennes returned Barclay's consular commission to Franklin, with an exequatur properly endorsed, but with the information that it could not be registered locally until it was countersigned by the admiral. Wharton, V, 796.

²⁵*Journals*, XXI, 792 ff., gives the plan for the convention in 18 articles and the memorial. The latter is also printed in Wharton, IV, 604.

²⁶*Ibid.*

arouse opposition in a republic and therefore Congress was asked to hasten the business to a conclusion without undue publicity. This was urged on the ground that it was to the interest of both countries to introduce "consistency and uniformity" into their commercial establishments without delay.

This appeared an auspicious time to open the business²⁷ for at the moment the prospects before the sorely tried young republic were gloomy.²⁸ If the war continued money would be an absolute requisite, if peace were made money would be equally necessary to pay the soldiers and establish the government upon a working basis. Funds must be procured and it was certain America could not supply the indispensable sum.²⁹ The friendship and continued fiscal coöperation of France was considered essential, therefore in an effort to do everything in its power to accomplish what was desired, Congress, though opposed to granting extensive privileges to consuls, took up the business in earnest. Finally after some two months of characteristic procedure a draft which incorporated the substance of the French sketch but which was drawn in a style and arranged so as to be better suited to the comprehension of republicans and more applicable to a federal system was accepted.³⁰ Congress was convinced that perfect reciprocity in every article was desirable and approved a report which explained that objections to such parts of the Versailles plan as were deemed inadmissible were "chiefly grounded on the ambiguity of terms and a repugnance to the spirit and genius of America."³¹ However, eight articles in Luzerne's draft were accepted outright, clarification in the language of six was attempted, and the substance of only four questioned.³²

²⁷*Ibid.*

²⁸Washington to President of Congress, August 2, 1781, *Washington's Writings* (Ford ed.), IX, 324. On June 15, 1781, Congress authorized the commissioners to accept the proposed mediation of the Empress of Russia and Emperor of Germany. They were to accede to any terms which effectually secured the independence of the states and left the treaties with France in full force. *Journals*, XX, 651.

²⁹Robert Morris to Franklin, July 21, 1781, Wharton, IV, 598. Robert Morris to the Governors of the States, July 25, 1781, Wharton, IV, 601.

³⁰The committee reported on October 15, 1781, but Ellsworth and Van Dyke were not in Congress; the report was debated, recommitted and Roger Sherman and George Clymer added to the committee. *Journals*, XXI, 1053.

³¹*Journals*, XXII, 17 ff.

³²*Ibid.*

The scheme provided that French consuls were to present their commissions to Congress whose act of official recognition was to be delivered to the executive department of the state in which the duties were to be performed, which would issue the *exequatur*.³² Consuls might appoint as many vice consuls as they desired but official notification was to be made directly to the governor of the state in which they were to officiate. They were to be citizens of the power appointing them but were to be denied the privilege of taking part in trade or commerce. Consuls might appoint agents to assist merchants but they were to have no official recognition. Consuls and vice consuls were to enjoy full immunity for their persons; their papers and houses were to be exempt from search, they were to be free from all duties, taxes, and imposts upon movable property, and each was to be permitted to erect a chapel in his house for the celebration of divine service according to his religious professions. If called upon to perform a judicial or official act consuls were to be notified in writing or verbally by a civil or military officer. They were to have power to establish a chancery, appoint the necessary custodians of the same, and empower them to discharge the functions of notaries and registers. Last wills, testaments, and copies of acts duly authenticated under the consular seal were to "receive full faith and credit in all courts of justice." Consuls were to receive protests and settle disputes over cargoes of their nationals in transit, and in case a ship bearing the flag of their nation was wrecked within their district they were to assume full charge. On board the vessels of their nationality consuls were to have all power and jurisdiction in civil matters. They might cause the vessel to be arrested, sequestered, and returned to their own country. The officers, crew, and passengers might be arrested, while "sailors and deserters of their respective nations" might be retained or sent home; sufficient evidence for such procedure should be the appearance of their names in the ship's register or on the roll of the crew. Jurisdiction was to extend to all cases between his fellow citizens in the territory over which the consul presided. Questions concerning commerce arising between citizens of the United States, one party residing in the States or elsewhere and the other in France, were to be "heard, tried, and decided on by" the American consul. But cases between subjects of different sovereigns were to be referred to the courts. Americans were to enjoy

³²The scheme of the convention is given in the *Journals*, XXII, 47-54, also *Dip. Corr.*, I, 205-211.

the benefits of the special commercial tribunals of France. Citizens of each country were to be exempt from all personal services when residing in the other; in case a person claimed any privilege or exemption on the grounds of being a subject of the other a certificate of the "consul or vice consul of the district containing his name, surname, and the place of his residence, and the affidavit of the person claiming such privilege" was to be sufficient evidence unless the contrary was apparent. Consular powers, privileges, and authority were expressly placed upon a most favored nation footing. A convention embodying these terms, it was hoped, would stimulate French commercial intercourse with the republic to such an extent that the distressing need for funds would soon cease to be troublesome.

On January 25, 1782 Franklin, the minister at Paris, was directed to secure approval of the court for the scheme.³⁴ He was told to use his discretion as to the wording and arrangement but to confine himself to the substance of the plan except the article relating to the erection of a chapel which might be dropped. But especial care was to be taken to make the provisions dealing with recognition of consuls reciprocal, and to guarantee to persons attached to the consulate the same privileges and immunities granted the consul and vice consul. This was to be done "in a manner most conducive to expedition and freest from difficulty."³⁵ It was deemed wisest to lay the least restrictions possible upon negotiations designed to produce a system insisted upon by France and considered essential to the welfare of the young republic. This was the only instruction as well as the only authority given the minister.³⁶ Neither the French draft nor the discussions in Congress which arose therefrom were mentioned; however, he may have heard of the former while it was being formulated at the foreign office.

The draft was treated as a body of principles which Congress wished incorporated in a finished document. It was modified in some particulars but the negotiators remained in every essential well within the minister's instructions and the spirit of the scheme. By Christmas 1783, terms had been agreed upon,³⁷ but

³⁴*Journals*, XXII, 46.

³⁵*Ibid.*

³⁶This was incorporated at Luzerne's suggestion in the conference reported January 22, 1782.

³⁷Franklin to the President of Congress (Thomas Mifflin), December 25, 1783, Wharton, VI, 740; Smyth, IX, 129.

the convention was not concluded and finally signed until July 29, 1784.³⁸ During this period conditions in the United States changed materially. Congress was no longer animated with the same feeling of need for close coöperation with its ally, the anti-Gallicans were in control. Peace had been concluded and the British indicated an intention to extend favorable terms to American commerce. Thus it was supposed the country occupied a position which would enable it to insist upon a convention more consistent with the theory of absolute equality and actual reciprocity.³⁹ In keeping with the changed conditions at home, but with no knowledge of what had been done at Paris, on December 14, 1784, Congress decided to delay or suspend the negotiations.⁴⁰ It was too late; the convention had been signed and France was not likely to enter willingly into revision designed to take away advantages she might have gained.

The resolution was sent to Franklin by Lafayette who sailed from New York on January 25, 1785.⁴¹ This was the first intimation to the minister of the change in the determination of his government.⁴² He was ignorant of the nature of the objections which had arisen and was therefore somewhat perturbed. He consulted Jefferson.⁴³ The astute son of Virginia, relatively fresh from home, was also unable to explain the action of Congress, but supposed it might have been a result of rumors regarding the failure to include an article restraining consuls from participating in commerce.⁴⁴ This appeared the most probable explanation to Franklin and he reported that the provision had been omitted as unnecessary since each country would have the power to impose restraints upon its own officials when and how it thought best. He believed, however, the French court would

³⁸The convention is given in *Dip. Corr.*, I, 211-218; the last line above the signatures of Vergennes and Franklin is: "Done at Versailles, the 29th July, one thousand seven hundred and eighty-four."

³⁹Jay to Franklin, November 30, 1784, *Corr. and Public Papers of John Jay* (Johnston ed.), III, 134.

⁴⁰*Journals*, XXVII, 685. This motion was made by John Jay and seconded by Elbridge Gerry.

⁴¹Tower, *La Fayette in the American Revolution*, II, 468.

⁴²Franklin to the President of Congress (R. H. Lee), February 8, 1785, Smyth, IX, 286.

⁴³*Ibid.*

⁴⁴*Ibid.*

readily agree to any addition or reasonable alteration, but suggested the convention be ratified, and the desired change made by a supplementary article.⁴⁵

Before the convention or Franklin's letter reached America it became necessary to act on a question involving the rights of French consuls within the United States. Marbois, in his capacity as consul general, on April 9, 1785, designated his brother as vice consul, then asked Congress to pass a resolution affirming the appointment and to authorize a requisition to the states of Pennsylvania and Delaware for his *exequatur*.⁴⁶ But so far as could be determined the consul had heretofore exercised the authority to appoint vice consuls and to give a proper authorization. In this case no commission appeared, yet it had been the practice to present one before recognition was accorded. The chief difficulty arose because of the uncertainty which existed respecting the proposed convention. Franklin had reported on December 25, 1783, that it was at length completed and was being transcribed in order to be signed. Since then no evidence could be found that further progress had been made, yet Marbois might possibly have been following a method prescribed therein. Since, however, the scheme set forth rules covering such a case by directing notification of appointment to the supreme executive power of the states where the vice consul was to perform his duties, and since no convention had been ratified, it seemed unwise to Congress to comply with the request.⁴⁷ By the original method this had not been the rule; the convention, whatever its provisions, had not been approved, so it was decided to make no departure from the established custom. But Congress was anxious to give France no cause for complaint, and therefore called the attention of Marbois to the fact that on September 14, 1781, a rule had been adopted covering the point he had raised and since no change had been made it seemed best to observe the original method, to vary from the mode established in no particular, until it was changed by the ratification of a general consular arrangement.⁴⁸

⁴⁵*Ibid.*

⁴⁶Marbois to Jay, April 9, 1785, *Dip. Corr.*, I, 127.

⁴⁷Report of Secretary Jay, "on a communication from the *Chargé d' Affaires* of France, relative to Vice Consuls," dated April 18, 1785, *Dip. Corr.*, I, 129.

⁴⁸*Secret Journal*, III, 553; also *Journals*, XXI, 925.

The convention finally arrived at New York in the early summer of 1785.⁴⁹ The government took no action. France was annoyed, as it wished to proceed to the exchange of approvals at once.⁵⁰ The following April, Otto, the French chargé d'affaires, called the attention of Congress to its failure to ratify the convention and said inconvenience to his countrymen resulted from the delay. Versailles was not content with this reminder and ordered the charge' to confer with the secretary for foreign affairs. The latter was understood to promise to solicit the validation of the convention as soon as nine states should be represented in Congress.⁵¹ Jay, however, thought he promised that Jefferson, American minister at Paris, would be instructed to explain the reasons for the delay, and to do all else that depended upon him to bring the matter to a speedy termination.⁵²

The French action reopened the whole subject and called forth an exhaustive report from the secretary for foreign affairs.⁵³ He opposed any consular convention⁵⁴ but was especially hostile to one with France. Yet since he realized that any general criticism might be regarded as directed at the action of Congress he examined and compared critically section by section the scheme and the convention.⁵⁵ He discovered little good in either but found that they differed in several particulars. The title of the convention limited it to the "thirteen" United States which would exclude other states that might become members of the union. Consuls were not expressly directed to present their commissions to Congress but were to proceed according to the established forms. This it seemed might be interpreted to mean regulations set up by state governments and therefore encourage a disregard for federal authority. The provision that consuls be citizens of

⁴⁹On June 15, 1785, Jay wrote Jefferson mentioning the various communications received from Paris, but did not mention the convention; however, on July 13 Jay wrote that a copy of the convention had arrived. *Dip. Corr.*, I, 614 and 615. Franklin started this copy to the President of Congress under date of February 8, 1785, Smyth, IX, 289.

⁵⁰Otto to Jay, April 18, 1786, *Dip. Corr.*, I, 204.

⁵¹Otto to Jay, June 27, 1786, *Dip. Corr.*, I, 235. The French chargé in this letter reminds Jay of his promise.

⁵²Jay to Otto, July 3, 1786, *Dip. Corr.*, I, 236.

⁵³Jay explained to Otto that his letter of the 18th was received the 19th, transmitted to Congress the 21st, and referred back to him the 25th.

⁵⁴Jay to Adams, September 6, 1785, Jay, *Life of John Jay*, II, 171.

⁵⁵The report is given in *Dip. Corr.*, I, 218-231.

the nation appointing them and that they be excluded from participation in commerce was omitted from the convention as was also the stipulation regarding a chapel. The latter was said to be a departure from reciprocity since France had an established church while in the United States all were upon an equal footing. The convention provided for admission by courts of factual evidence, vouched for by the consul; the scheme confined jurisdiction to cases where none but their own people were concerned while the convention extended it to foreigners, even permitted agents to exercise the consular function. Consuls were given authority personally to arrest crews, passengers, and vessels. The convention made a certificate issued by a consul proof of nationality and provided that persons possessing such document should not lose under any contingency "the quality of subject of the country of which they originally were," while the scheme required a joint affidavit of the party and therefor did not permit consuls to prevent naturalization of their fellow subjects.⁵⁶

Jay was really interested in calling attention to the evils in any consular arrangement and therefore turned his criticism upon the principles involved. He pointed out other objections of a more fundamental character, but was always careful to use the document under consideration as an example.⁵⁷ To him it appeared that the adoption of this convention would create a broad line of division between American and French subjects within the states. He also considered it greatly deficient in reciprocity since America was to admit French consuls into all of its ports whereas no provision was made for the admission of its consuls into any of the ports or dominions of his Most Christian Majesty except continental France. This would exclude consuls and inferentially commerce from the French West Indies—something any American government should hesitate to sanction. A convention of this nature would place every part of the country under the watchful eye of a consul, who might establish agents in the principal ports and representatives in less important districts. These in addition to a minister near Congress would "constitute a corps so coherent, so capable of acting jointly and secretly, and so ready to obey the orders of their chief, that it cannot fail of being influential in two very important political respects—first, in acquiring and communicating intelligence; and second, in

⁵⁶*Ibid.*

⁵⁷*Ibid.*

disseminating and impressing such advice, sentiments, and opinions of men and measures as it may be deemed expedient to diffuse and encourage."⁵⁸ No good reason could be assigned for the exemption of consuls from the jurisdiction of the law or the provision that they might give testimony in court in a less formal way than prescribed for others. The establishment of consular chanceries, it was believed, would interfere with the operation of domestic law and custom, and might even obstruct the freedom of Congressional action. The secretary was convinced that consular conventions would provide against infractions of the signatories' laws of trade, prevent the people of each country immigrating to the other, and establish an influential corps of officers to foster political and mercantile views, but thought the United States had no interest in the promotion of any of these objects.⁵⁹

This criticism was followed by suggestions for dealing with the situation. Jay thought his government not obliged to ratify the convention since the minister had departed from his instructions and circumstances had materially changed since the scheme was adopted.⁶⁰ In 1786, the true policy of the country did not require but rather militated against treaties of this character. Since, however, a former Congress had assented to the plan he advised that the French court be informed of the objections to the form in which the convention was signed, and assured of a readiness in America to accept a compact drawn agreeable in every particular to the original scheme, provided it be limited to no more than ten years.

Congress adopted the recommendations,⁶¹ and on October 3, 1786, Jefferson was directed to press only such objections as arose from the departure of the convention from the scheme.⁶² He was told also that the design of his government was to promote mutual and reciprocal benefits and conveniences. It therefore thought it wise to try the merits of the arrangement before making it permanent, and desired it to cease as soon as it became useless or unsatisfactory to either party. But if after a few years it should be found to serve the intended purpose it could be renewed.

⁵⁸*Ibid.*

⁵⁹*Ibid.*

⁶⁰*Ibid.*

⁶¹*Secret Journal*, IV, 132.

⁶²Jay to Jefferson, October 3, 1786, *Dip. Corr.*, I, 766.

If it did not serve the purpose for which designed, experience would point out in what particular it should be amended or altered. Deviation from perfect reciprocity was to be made as slight as possible.⁶³

Federal officials saw little to be gained by consular treaties, and Jefferson was convinced the various states would be reluctant to conform their laws either to the scheme or the convention.⁶⁴ And when the instructions of October 3 arrived, he resolved to do his best to reform the agreement but had little hope of success.⁶⁵ Since he was directed to produce the documents in the case, and feared if they were examined by the minister no change would be consented to, and since the United States appeared bound to ratify the convention if France insisted, Jefferson hurriedly wrote home asking if it would not be expedient to give him instructions in which there was no reference to the scheme or the convention. Such a full power he said could be sufficiently guarded by private instructions not to go beyond the former scheme. He hoped in the midst of the rising domestic storm that the foreign office had forgotten the entire subject. If such proved to be the case, the question might be considered in its present aspect. And since delay was not injurious, because the acceptance of the convention would place the United States in a less favorable position than it then occupied, he decided not to raise the subject until Congress had an opportunity to consider his proposal.⁶⁶

The suggestion was approved.⁶⁷ Congress had little hope for success since it thought the court regarded the convention with especial interest and had permitted none of the articles or provisions to escape its recollection. Yet there was a bare possibility that the new ministry was not well advised of what had been done and some advantage might be secured; at least an article limiting the duration of the agreement might be added.⁶⁸ There was certainly nothing to lose, and Jefferson was given instructions and full power in which no mention was made of the former scheme, convention, or negotiations. He was commissioned to agree upon the terms of a treaty for the regulation of the powers, privileges,

⁶³*Ibid.*

⁶⁴Jefferson to Jay, January 9, 1787, *Secret Journal*, IV, 377; also in *Dip. Corr.*, II, 18.

⁶⁵*Ibid.*

⁶⁶*Ibid.*

⁶⁷Secretary Jay's report to Congress is given in *Secret Journal*, IV, 378.

⁶⁸*Ibid.*

and duties of consuls, vice consuls, agents, and commissaries. He was informed that his government would ratify any agreement he made provided it were limited to a period not exceeding twelve years.⁶⁹ In an "express and special commission" he was told if the whole subject should be reconsidered, and a new convention formed, it was the desire of his government that "the duties, powers and privileges of consuls, vice consuls, agents and commissaries be accurately delimited, and that they be as much circumscribed and limited as the proper object of their appointment will admit, and the court of France shall consent to."⁷⁰ And again he was promised that any convention he made would be ratified if limited to twelve years and not liable to more objections than the one signed by Franklin.⁷¹

Jefferson received these instruction on December 19, 1787.⁷² But at the moment he was in the midst of an endeavor to promote the commerce of his countrymen with France by securing a reduction of duties in the latter's ports on certain commodities in American bottoms, especially whale oil. The reduction was officially announced on December 29.⁷³ The minister, however, desired some interval between this favor and the solicitation of another; therefore, it was not until late in April, 1788, that the subject was introduced to Montmorin, minister for foreign affairs.⁷⁴ The French had forgotten none of the stipulations in the convention and it was necessary to go over the original documents and to explain the objections item by item.⁷⁵ This was done with tact, moderation, and success, and a convention was signed on November 14, 1788.⁷⁶ Most of the negotiations were with Rayneval, under secretary in the foreign office, but the reasons for their protraction were the necessity of consulting the minister of marine at every stage of the procedure, and because "the spirit of this extension of authority given by the convention of 1784 were so homogeneous with the spirit of this Government that they were prized here."⁷⁷ It differed from the agreement of

⁶⁹*Ibid.*

⁷⁰*Secret Journal*, IV, 381.

⁷¹*Ibid.*

⁷²Jefferson to Jay, November 14, 1788, *Dip. Corr.*, II, 193.

⁷³*Ibid.*

⁷⁴*Ibid.*

⁷⁵*Ibid.*

⁷⁶*Ibid.* Also Malloy, I, 490.

⁷⁷Jefferson to Jay, November 14, 1788.

1784 in that the provisions investing consuls with the privilege of the law of nations were dropped. They were expressly subjected in person and property to the laws of the land. The provision extending the right of sanctuary to their houses was reduced to protection for their papers and chancery. The coercive power of the consul over passengers, subjects of his government on ships bearing its flag, was taken away, and the proposed power over immigrants was made to apply only to deserted seamen. The rights of consuls to arrest and return vessels were dropped, but they were given general police authority over ships of their nation. The innovation in the law of evidence was excluded, and the agreement limited to twelve years.⁷⁸ This was a compromise between the principles of broad powers contended for by France and the limited privileges deemed wisest by America. More could not be procured "with good humor," and Jefferson took what he could get.

These alterations were satisfactory to both Congress and the public. The convention was regarded as less objectionable than either the original scheme or the draft signed in 1784,⁷⁹ but reached America too late to receive the official approval of the old Congress, and in 1789 President Washington submitted it to the senate for approval.⁸⁰ On July 22 Jay was asked to give his opinion as to how far the faith of the United States was pledged by previous commitments to ratify the agreement.⁸¹ He thought the government under obligations, and advised ratification since the objections previously complained of had been dropped and the engagement was limited to a period of twelve years.⁸² Jay's report was made on July 25, and four days later the Senate gave its formal approval.⁸³

⁷⁸*Ibid.*

⁷⁹Jay to Jefferson, March 9, 1789, *Dip. Corr.*, II, 258.

⁸⁰*Annals of Congress*, 1st Cong., 1st sess., p. 52.

⁸¹*Executive Journals of the Senate*, I, 7.

⁸²The secretary's report is given in *Dip. Corr.*, I, 273-275.

⁸³Malloy, I, 490, Moore, *International Law Digest*, V, 184.

JACKSON, ANTHONY BUTLER, AND TEXAS

BY RICHARD R. STENBERG

Colonel Anthony Butler appeared at Washington in August, 1829, handed Van Buren a brief urging the purchase of Texas, and asked to interview President Jackson, who, not loath to see his old friend, observed cynically: "The constitutional question can easily be gotten over; two millions added to the one already offered will amend the Mexican Constitution."¹ When seeking Texas in 1828 Poinsett had been assured that "a dismemberment of the Mexican territory . . . is prohibited by the constitution"; his treaty then confirming the Sabine line of 1819 was still unratified. Jackson had long wished to "correct the error of 1819," and Butler suggested that "the belligerent attitude of Spain [towards the Mexicans] is not calculated to make any proposition by which they can obtain money less acceptable." Butler held that the Sabine was of rights the Neches—a view probably inspired by his lands near Nacogdoches, Texas, between the rivers. Jackson could hardly have believed this specious idea and probably merely countenanced it conveniently thenceforth as an entering wedge; it seems indicative of conscious error that he always spoke of the Neches as "represented to him" to be the true line, avoiding appearance of having himself considered the matter.² The claim took on considerable historical importance in 1836.

Jackson sent Butler shortly to Mexico with secret instructions for Poinsett, offering sums up to five millions for various slices of Texas. Although Mexico had been hostile to any cession, no

¹Jackson to Van Buren, Secretary of State, August 12, 1829, in J. S. Bassett, *The Correspondence of Andrew Jackson*, IV, 57; Butler's "Notes on Texas," in Van Buren MSS. (in the Library of Congress). Jackson had once been guardian to Anthony Butler, on whose career see *ibid.*, I, 207 note, and G. L. Rives, *The United States and Mexico, 1821-1848*, I, 235.

²Instructions to Poinsett, August 25, 1829, in *Cong. Debs.*, XIV, Pt. II, App. 128; Jackson to Amos Kendall, August 12, 1836, in Bassett, *op. cit.*, V, 420, 421; cf. Rives, *op. cit.*, I, 377. Butler's ludicrous arguments for the Neches claim are given in E. C. Barker, *Mexico and Texas, 1821-1835*, pp. 47, 48. The claim apparently originated with the American speculators of the Sabine-Neches region. G. W. Featherstonehaugh, *Excursion through the Slave States* (London, 1844), II, 155. On Jackson's fraudulent manuscript map brought forth in 1836 to support the Neches claim see *National Intelligencer* (Washington), August 10, 1836.

means of attainment were to be left untried. Thus, it seems the General connived at Sam Houston's plan of filibustering against Texas through Arkansas, cleverly saving the appearances of neutrality. On December 10, 1830, having received further information of Houston's project from Dr. Robert Mayo, Jackson wrote a "private" letter to William Fulton, the Secretary of Arkansas Territory, advising him to watch Houston, report his movements, and counteract any attempt against Mexico. Probably this "confidential" neutrality letter was not sent to Fulton till 1833. Both Jackson's "copy" of it and Mayo's letter to him of December 2, 1830, bear endorsements in Jackson's hand which contain three discrepancies and errors seemingly deliberately designed to deceive: Fulton was very strangely addressed as "Secretary of the T. of Florida." Jackson's endorsement on Mayo's letter is especially curious:

Dr. Mayo—on the contemplated invasion of Texas private and confidential—a letter to be written, confidential, to the Secretary of the T. of Arkansas [Fulton] with copy of confidential letter to Wm. Fulton Esq Sec to the T. of Florida.

Jackson speaks of the Secretaries of two territories and puts himself on record as having sent a letter concerning Houston's *Arkansas rendezvous* to Fulton in *Florida* and as being about to send a *copy* of it to the *unnamed* "Secretary of the T. of Arkansas"—who was Fulton by Jackson's appointment of the year previous! The errors are too obviously deliberate and calculated to explain some time why Fulton did not receive the letter if Houston's success should ever call for explanations. Found to have been "carelessly" and "inadvertently" misaddressed, the letter or letters must have gone astray. There was no earthly reason for bringing Florida into the matter, except as a blind. A clever falseness seems clearly to pervade this gesture. To explain such discrepancies and "errors" in the public and private papers of the "honest" Jackson friends invented the theory of his "bad memory." It seems doomed to fall.

Similarly, Jackson's "Marable memorandum" of May, 1829, in which he puts himself on record as being about to have the Secretary of War write Pope, the *Governor of Arkansas*, to watch and counteract Houston, has every appearance of being a sheer hoax: this appearance of supporting neutrality is inconsistent with the *Secretary Fulton* "private" letter tale, and no trace of any actual letter from Secretary Eaton to the Arkansas Governor

was ever found, though diligently sought for in 1838 at the time of the exposure of the Fulton letter by Mayo and Adams. Historians have hitherto viewed Jackson's Marable memorandum and Fulton letter as evidence of sincere endeavor to preserve neutrality, but many contemporaries were inclined to think otherwise.³

Jackson professed to consider Houston's reported design and activities as "the efusions of a distempered brain." Hardly candid, however, was his equivocal protestation in his formal instructions of October 16, 1829, to Butler, for Mexico's eye, that the United States had always had "good wishes for Mexico, under the control of a strict and persevering neutrality. The idea of military invasion of the Mexican territory has never entered into the imagination of the United States, nor, it is believed, of any one of their citizens." Yet Jackson constantly wished Butler to impress Mexico with her danger from this very quarter, and his elaborate literary activities upon receiving reports and information concerning Houston from Marable and Mayo cast doubt on the sincerity of his professed disbelief in the actuality of Houston's intriguing. His abortive effort at this time (1830) to give Houston an over-fat Indian-ration contract does not imply that he had lost confidence either in Houston's sanity or patriotism. It was later estimated, and Jackson knew roughly, that Houston would have profited nearly a million dollars if he had received the clandestine contract without the competitive bidding required by law; and it is barely wondered whether such appropriation had any "diplomatic" object in view, inasmuch as Houston's

³The Fulton letter "copy" (so labelled carefully by Jackson) and the two endorsements, all in Jackson's hand, are reproduced in facsimile in R. Mayo, *Political Sketches of Eight Years in Washington* (Baltimore, 1839), opposite 125; cf. James Parton, *Life of Jackson*, III, 656. The letter when sometime sent on to Fulton—and circumstantial evidence points to 1833 as the time—was correctly addressed to Fulton as "Secretary of the T. of Arkansas," which plainly shows that the Florida errors of the endorsements of 1830 were deliberately false. Except in its addressing the letter sent to Fulton was practically the same as the pretended "copy," whose several erasures and insertions belie the claim that it was a mere copy. The older view of these Jacksonian productions ignored the discrepancies, which Bassett takes the liberty of "correcting" or expunging in his version of the Fulton letter in *Cor. of Jackson*, IV, 212, 213. See Bassett, *Life of Jackson*, II, 677; Barker, "President Jackson and the Texas Revolution," in *Am. Hist. Rev.*, XII, 797-803. A certified copy of the letter actually sent Fulton in Arkansas is in the Jackson MSS., 1839; photostat in Univ. of Texas Archives.

chief deterrent in his Texas scheme seems to have been his continual lack of funds.⁴

Soon after Butler left as letter-bearer Commodore Porter arrived from Mexico, bringing news from Poinsett and the seed-corn of a new phase of diplomacy. In a "private and confidential" letter of October 10, 1829 (anticipating Mexico's request for Poinsett's recall, delivered October 17) Jackson made Butler *chargé* to succeed Poinsett in the legation and Texas negotiation. Butler was advised gently to aggravate Mexico's fear of American filibusters' invading Texas and point out to Mexico her crying need of money.⁵ The President said Commodore Porter told him that Mexico's Minister of Foreign Affairs or Minister of the Treasury, perhaps both men, had

obtained a large grant of land in Texas. . . This circumstance may be made to favour the negotiation for the cession by stipulating for the surrender of this grant to the United States, at a fair price, as a part of the five millions to be given for the whole province. This must be an honest transaction, however, not a violation of your general instructions, to regard no grant as legalized, which at the time of cession, shall have any condition to be complied with. . . I scarcely ever knew a Spaniard who was not the slave of avarice, and it is not improbable that this weakness may be worth a good deal to us, in this case. Be cautious, and while you profess great confidence in those around you, and with whom you have to act, be the possessor of your own Secretes.

Some time Butler endorsed this: "*Gen. Jackson. Remarkable communication.*" Jackson professed to stay within the pale of virtue; yet Butler says, and we may believe, that he understood

⁴The subject of Jackson, Houston and Texas is treated at some length in the writer's doctoral dissertation, *American Imperialism in the Southwest, 1800-1837* (The University of Texas, 1932), Ch. VII.

⁵Jackson to Butler, confidential, October 10, 1829, in Butler MSS. (in The University of Texas Archives); Bassett, *Cor. of Jackson*, IV, 80, 81. Butler was told to show his official instructions, which omitted invidious mention of Texas, "very confidentially" to the Mexican government to gain their confidence. These lengthy, hypocritical instructions of October 16, 1829 (in *Ho. Ex. Docs.*, 25th Cong., 2nd sess., No. 351, pp. 40-53) are a tissue of false statements and insinuations which seem to have been deliberately conceived to intimidate Mexico. The United States is represented as Mexico's constant and virtuous friend, while Mexico is misrepresented as having been uniformly unfriendly, as having, for instance, long defeated a treaty confirming the Sabine boundary, when it was notorious that the *United States* had put it off, even foregoing a commercial treaty to do so. The real grievance was Mexico's failure to cede Texas! And Butler's mission was to reveal how Mexico could regain our confidence.

Jackson as suggesting bribery. The President was ready to use Spanish "averice," but he prudently wished the insidious influence of money exerted in an "honest" transaction so far as it involved the government of Andrew Jackson, Esq.

Butler soon believed that the President was agreeable to his pledging gratuities to Mexican officials to facilitate diplomacy, for he takes this for granted in his later private letters to Jackson. Did Jackson early authorize Butler to give veiled gifts "on his own responsibility" without the President's direct cognizance? In writing privately on January 5, 1830, Butler seems to have inquired how far the policy Jackson suggested might be carried, and proposed some method that did not displease the Old Hero, who replied: "Should you enter upon a negotiation of boundary it will be proper for you to pursue the course, *with regard to yourself*, mentioned in your private letter."⁶ If Butler had some sort of sanction his later bold avowals of his shady methods to Jackson would be well explained. While having no scruple against bribery itself, Jackson valued good appearances, and ended his letter of October 10: "When you have read this P.S. and my private letter you will burn them both . . . not being accustomed to diplomacy these might be stolen from you and make a handle against this government."

Reaching Mexico City in December, 1829, Butler found Jackson's Texas design execrated. President Guerrero had just been overthrown,⁷ and his friend Poinsett's odium was transferred to Butler. The adoption of Alaman's defensive Texas report of February, 1830, would provoke a Texas revolution in the opinion of Butler, who found it wisdom to make no overture for Texas until October, 1831, when he "cautiously approached" Foreign

⁶Jackson to Butler, March 23, 1830, in Bassett, *op. cit.*, IV, 130 (in reply to Butler's of January 5, which is not extant and was probably destroyed by Jackson). Butler in writing to Jackson on July 28, 1843, recalled Jackson's first private instructions, "in which you yourself make a suggestion that cannot be construed to mean anything else than authorizing a bribe or bribes if necessary to attain what we aimed at." Jackson MSS. (in the Library of Congress); photostatic copy in The University of Texas Archives.

⁷Guerrero was accused of having secretly negotiated with Poinsett for the sale of Texas. The charge was perhaps the basis of the statement in the *Iberville Louisiana* early in 1830 that if Butler "had arrived there a few months sooner, our informant thinks he would have found but little difficulty in concluding a treaty with the then predominant party for the purchase of Texas." Clipping in the Dienst Collection transcripts, in The University of Texas Archives.

Minister Alaman and learned once more that a cession was unconstitutional.⁸ As early as June of 1830 Butler declared himself on the "best terms with Mr. Alaman, and he cannot betray me."

Jackson was ever urgent for Texas, whose colonists would "declare themselves independent of Mexico the moment they acquire sufficient numbers." Border conflicts over Indians and fugitive slaves seemed to him "almost irresistible" arguments for a cession. He more than once assured Butler that his earlier views "remain unaltered," confirming Butler's belief that bribes were permissible.⁹ Jackson spoke once again of the Texas land grant supposedly held by the Mexican Foreign Minister, but Butler assured him, in May, 1831, that Alaman was not interested in Texas lands, as Lorenzo Zavala was. Yet Jackson still insisted that Alaman was "confidently" said to be thus privately interested.¹⁰

He looked to a cession anxiously, saying that a Texas revolt aided by American "emigrants" whom he could not restrain was the prospect to emphasize, as it may "close the door forever" to Mexico's still possible "advantageous settlement." He verged on menace, seeming to prophesy our union with a revolted Texas and grave consequences to Mexico:

A revolt in Texas . . . may break up the friendly understanding which is now established between this government and hers, and lead to a train of events that may obscure for a long period the sun of liberty in that quarter. No period can be more favorable than the present for its impartial and wise consideration.¹¹

Butler constantly harked back to the private instructions "two years since," writing the President in June, 1831: "As the influence of money is as well understood and as readily conceded

⁸Previous accounts of Butler's diplomacy are: Barker, "President Jackson and the Texas Revolution," in *Am. Hist. Rev.*, XII, 797-803; Rives, *op. cit.*, I, 234-261; T. M. Marshall, *The Western Boundary of the Louisiana Purchase*, 86-123. The customary view has been that the bribery idea originated with Butler and was not approved of by Jackson, who reproved Butler with indignation on finally "finding him out."

⁹Jackson to Butler, March 23, October 6, 1830, in Bassett, *op. cit.*, IV, 129, 130, 182, 183; same to same, October 19, 1829, in Rives, *op. cit.*, I, 243, 244.

¹⁰Butler to Jackson, May 25, 1831, in *Ho. Ex. Docs.*, 25th Cong., 2nd sess., No. 351, p. 381; Jackson to Butler, August 24, 1831, in Bassett, *op. cit.*, IV, 335, 336.

¹¹Jackson to Butler, February 15, 1831, in Bassett, *op. cit.*, IV, 243-245; cf. came to same, August 24, 1831, in *ibid.*, IV, 335, 336.

by these people as any under Heaven, I have no doubt of its doing its office." Adding:

Nothing but the full knowledge I possess of the Mexican character, their ignorance, gullibility, and cupidity would justify even a hope of success—but one of my views of the question will furnish a plausible argument for a transfer now that might properly have been treasonable in 1828, '9, and the great object of keeping down popular clamor will be attained—the other view based on money is as well understood.¹²

He believed that if Alaman's "scruples in relation to want of power over the subject . . . can be vanquished" by "any means" he would cede the desired territory. Jackson approved Butler's cautiousness and refrained from comment on his rather plain hints as to methods.

Butler urged that his treaty of April, 1831, in which Mexico had forced him to confirm Poinsett's shabby Sabine boundary treaty, "should not be ratified. By any subsequent contract on that subject we cannot do worse." He proposed repudiation of the Florida treaty settlement. Jackson replied on February 25, 1832, that he could not utterly suppress the treaty, but had asked Senator Tazewell if its consideration "could not be postponed." He enjoined Butler:

Push with all your zeal the negotiation. . . I have but little doubt but there will be an insurrection in Texas in less than six months . . . a revolution is intended, and people are emigrating to that country with a view to this thing, and it will be attempted shortly.

He added that when Texas revolted the United States might have to annex it immediately in "self-defence" against border Indians!¹³ In the light of this spirit it seems more than a mere coincidence that Jackson claimed privately in January, 1832, that George W. Erving, former ambassador at Madrid, had made a treaty with Spain in 1818-19 which acknowledged the Rio Grande as the western boundary. Jackson appears to have been preparing this tale to justify the seizure of a revolted Texas under the Louisiana Purchase claim, in pursuance of Madison's West Florida annexation precedent. Erving had never secured such a

¹²Butler to Jackson, June 23, 1831, MS., in the Archives of the Texas State Library.

¹³Butler to Jackson, January 2, 1832, and Jackson to Butler, February 25, March 6, 1832, in Bassett, *op. cit.*, IV, 390, 409, 415; cf. Jackson to Butler, October 7, 1830, in *ibid.*, IV, 184.

treaty, which Jackson claims to have been squelched by J. Q. Adams as negotiator of the Florida treaty. Jackson's tale (which was not publicly expressed until 1843-44!) was almost undoubtedly a deliberate deception boldly devised to further and justify his imperialistic wish. The Old Hero professed to base his knowledge concerning Erving's alleged "Rio Grande treaty" on a written statement that Erving had made for him December 17, 1829. Jackson's delay for several years before speaking privately of Adams's "treachery" and for twenty years before speaking publicly (when friends plausibly attributed his misstatement to "bad memory"!) would be passing strange if the revelation were actually made in Erving's paper; but Jackson's own friends admitted in 1844 that Erving's affidavit (which was never vouchsafed to the public) did not show that Erving could have got more than a Colorado boundary. The falsehood, dating at least from January, 1832, is clearly Jackson's, and his awareness that Erving's paper did not bear him out is inferred from his procurement of a new affidavit through his wire-puller W. B. Lewis in January, 1832, on the ground that he had "lost" that of 1829. Probably he really wished one more useful than a mere restatement or copy, but whether Erving's second affidavit of February 5, 1832, agreeably lent color to Jackson's falsehood is not known. Adams, who was in a good position to judge this affair, proclaims it a fraud on Jackson's part, and says that Erving's animosity towards Adams and hopeful desire for the Ministry to Paris would have been ample inducements to cause him to connive at Jackson and aid the hoax.¹⁴

In February, 1832, Butler was inspired by Mexico's virtual bankruptcy to suggest to Alaman that "ways and means could be devised for obtaining through the U. States a few Millions." Private concerns now took Butler for a time to Texas, where the Political Chief of San Antonio believed his presence had some connection with the then revolutionary disturbances.¹⁵ In June, on returning to Mexico, Butler reported that if he dealt with

¹⁴J. Q. Adams, *Memoirs*, VIII, 464 (January 31, 1832); Jackson to A. V. Brown, February 12, 1843, in Parton, *Jackson*, III, 658-660, and *Niles' Register* (Baltimore), LXVI, 70. Adams made a trenchant exposure of the matter in his Address at Weymouth Landing, October 13, 1844, in *Niles' Register*, LXVII, 158, 159. Cf. Jackson to Butler, October 7, 1830, in Bassett, *op. cit.*, IV, 183; A. V. Brown, *Speeches and Writings*, 503-518.

¹⁵Rives, *op. cit.*, I, 222, 223; Stephen F. Austin to S. M. Williams, April 12, 1832, in *Miss. Valley Hist. Rev.*, XI, 99.

Alaman "alone" they would "not disagree eventually . . . for I think I hold the key to unlock his heart and the means of enlightening his understanding."

On July 2 he proposed the purchase cession to Alaman, stressing Mexico's penury and the certainty of revolution in Texas. Alaman told him to bring maps and they would trace the present line and "see to what limit it might prudently be extended west." When they met next Alaman thought Butler's proposed line "too far west, and besides includes a portion of the population of Texas purely Mexican," but was willing to yield the Colorado, and might, says Butler, "eventually have conceded a more favorable line." Butler was asked to write down his plan for the consideration of the administration.¹⁶ The Colonel claims that after the boundary treaty of 1831 had been signed Alaman had remarked to a friend: "My anxiety is now over, a recognition of our pretensions to Texas is now made . . . I have always doubted whether the U. S. might not have fairly claimed the territory to the Rio Bravo unless the King of Spain had interposed the right of the Spanish Crown under the treaty of 1819."¹⁷ Butler wrote for Jackson's "private eye" in bolder detail of his diplomacy:

The amount to which I am limited for the purchase . . . will very probably be in part applied to *facilitate the negotiation*, in which case we shall provide for that portion of the payment by a secret article. . . . At the conclusion of the Treaty it may become indispensable for me to be myself the bearer to the U. States, and for this purpose I beg of you to order immediately one of the Sloops of War . . . to Vera Cruz, report to me and wait my instructions . . . because as I have already remarked it may become indispensably necessary for the purpose of making explanations in regard to the contemplated secret Article.¹⁸

¹⁶Butler for Secretary of State Livingston, July 16, 1832, enclosing minutes of two conversations with Alaman, in *Ho. Ex. Docs.*, 25th Cong., 2nd sess., No. 351, pp. 442-445; Butler to Secretary Forsyth, June 17, 1835, MS., in State Department. I am deeply indebted to Professor Eugene C. Barker for the use of his transcripts and notes of this and other letters in the State Department.

¹⁷Butler to Jackson, February 6, 1834, in Bassett, *op. cit.*, V, 247. The same sentiment is ascribed to Martinez, private secretary to Luis de Onís in 1818-19 and Mexican Minister to the United States in 1837. James W. Breedlove's testimony in A. V. Brown, *Speeches and Writings*, 506. On the question of the validity of the French claim to Texas see the writer's "The Western Boundary of Louisiana, 1762-1803," in *The Southwestern Historical Quarterly*, XXXV, 95-108; and forthcoming, "The Boundaries of the Louisiana Purchase," in *Hispanic American Historical Review*, 1933.

¹⁸Butler to Jackson, July 18, 1832, in Bassett, *op. cit.*, IV, 463, 464.

It has been thought that Jackson disapproved of and ignored this shady letter, his reply in October having been overlooked. In this enthusiastic letter he referred to Butler's "optimistic" notes of July 18 and 27 and August 12 and 30, and "was pleased to find" the prospect of cession good. "The lasting peace and friendship of the two Republics depend upon it." He regarded the golden fruit all but in hand and made no objection to Butler's avowed intention to use money to "facilitate the negotiation." He promised that the desired sloop should lie off Vera Cruz and convey the successful diplomat to New Orleans, whence a steamboat would "soon waft" the new hero up the river towards Washington.¹⁹ The letter contained only hopeful joy. And not till Butler had schemed another year did he receive any intimation that Jackson was averse to bribery, and then he deemed it a change indeed in his instructions. But in 1832 revolution intervened and Alaman fled from the capitol, leaving his family in Butler's care. The hopes of early cession were cast to earth, but the Colonel promised to succeed yet, "or I will forfeit my head." Butler now tried, says Houston, to "obtain a monopoly of the fur trade of the Rio Grande"—an aim of the venial James Wilkinson in past times.²⁰

On Alaman's passing from the picture, Jackson grew chary of his agent's boldness. Chances were slim and new men, especially such a turn-coat and jingo as Santa Anna, might not be offered private inducements safely. So, on February 14, 1833, he assumed a safe, aloof ground: "The five millions . . . can be disposed of in the negotiation as the minister of Mexico appointed to confer with you may deem proper."²¹

Meanwhile Butler proposed to make a loan to Mexico with Texas as mortgage—a virtual sale "hinted" to Butler by the Mexicans and reminiscent of the McLane-O'Campo treaty of 1860. But Jackson was not interested, for he was impressed by Houston's

¹⁹Jackson to Butler, October [29, ? 1832], in Butler MSS. The letter is somewhat mutilated. Butler's of July 27 is not extant.

²⁰"I saw your letter, in January, 1833, to Col. James Bowie, on this subject . . . which fact I communicated to Gen. Jackson," wrote Houston to Butler, December 25, 1845, in Archives of the Texas State Library. On Wilkinson's fur trade schemes about 1805 see I. J. Cox, "Opening of the Santa Fe Trail," in *Mo. Hist. Rev.*, XXV, 30-66.

²¹Jackson to Butler, February 14, 1833, in Bassett, *op. cit.*, V, 17. Butler wrote Jackson on September 14 that Santa Anna was "proverbially the most hypocritical and insincere of the whole Mexican nation."

letter of February 13, which averred that Texas would soon secede if Mexico were not "restored to order, and the constitution revived." The idea of getting Texas without cost moved Jackson to send Butler's rejected plan to Secretary Livingston endorsed:

. . . Instruct Col. Butler to bring the negotiations to a close. The Convention in Texas meets the 1st of next April to form a constitution for themselves. When this is done, Mexico can never annex it to her jurisdiction again, or control its legislation. It will be useless after this act to enter into a treaty of boundary with Mexico.²²

On September 14, though little hopeful "with the present men in power," Butler reported having offered the liberal Zavala—a fellow Texas-land speculator, who had some desire to move to the United States—the sum of \$200,000 for his assistance in gaining the cession:

As I said to you before, it is probable that I shall employ 4, 5, or \$600,000 of the sum . . . in purchasing Men, and the remainder in purchasing the Country, as you permitted me to use the amount according to my discretion. . . I have since thought that probably one million may be employed, and the other four for the Territory. . . I am not sure whether some threatening may not only be useful but may become necessary.

He added, but struck out: "They are a set of cowardly dogs, that may be driven from one end of the Republic to the other with 8 or 10 good Regiments, and with that force I would pledge my head . . ." Butler enclosed a "private note" on Texas which he had addressed to Santa Anna, who, being on the point of leaving for the army, had made no reply to the overture.²³

It has also been assumed that Jackson did not receive, or at least ignored, this letter from Butler; but we have his reply on October 30, which is without disapproval of Butler's again avowed reliance upon bribery. "I received in due time your favor of the 14th of September last, and have given its contents the careful consideration which they merited. In relation to the boundary I can only repeat what I have so often repeated before that it is vitally important." But Jackson wished Butler to use *finesse* and throw the formal responsibility on Mexico:

²²J. S. Reeves, *American Diplomacy under Tyler and Polk*, 72; cf. Adams, *Memoirs*, XI, 368.

²³Butler to Jackson, September 14, 1833, MS., In the Texas State Library. The Butler letters in his own papers are, of course, his copies.

Provided that you keep within your instructions and obtain the cession it is not for your consideration whether the Government of Mexico applies the money to the *purchase of men or to pay their public debt.*²⁴

Butler wrote later: "Let any man acquainted with the English language read this sentence and then decide whether it did not authorize me to purchase assistance in securing the object—bribing if you please."

Late in October of 1833 Butler reported a conversation with "one of the most shrewd and intelligent men of the country," who asked if he had "command of money." "Yes," answered Butler, recalling, he tells Jackson, "that you had instructed me to use the money at my discretion." The "shrewd man" said Texas could be had by paying \$300,000 to an important man and from \$300,000 to \$400,000 to others. Butler felt the treaty reduced almost "to as much certainty as I had it with Mr. Alaman." But the President read this message

with care and astonishment . . . astonishment that you would entrust such a letter, without being in cypher, to the mail, and that you should state . . . 'that you had money' and gave as reason, 'recollecting that I had authorized you to apply the amount designated for this object in any way which according to . . . your discretion . . . was best calculated to effect the purpose of your mission'—from this it might be construed that my private letters authorized you to apply corruption, when nothing could be further from my intention.

He had merely wished, he explained, to rid Texas of *unfulfilled* land grants at our expense, as "justice" surely dictated—though not before this time had Jackson ever suggested any such thing! He is distinctly shifty on these grants; and his harking back to his early private instructions on this matter as the assumed cause of Butler's "misapprehension" seems insincere and seems to show that he had long been aware of the fact and source of Butler's "error." The five millions were now to enable the Mexican government generously to "buy in all claims for grants of land in Texas that had been given and whose conditions had not been complied with—and transfer to us an unencumbered title."²⁵ Did he now actually believe the Mexican government would devote the money to philanthropy?

²⁴Jackson to Butler, October 30, 1833, in Butler MSS.; Bassett, *op. cit.*, V, 221, 222.

²⁵Butler to Jackson, October 28, 1833, in Bassett, *op. cit.*, V, 219, 220; Jackson to Butler, November 27, 1833, in *ibid.*, V, 228-230.

Jackson had been quite conscious of the discrepancy between this self-saving idea and Butler's earlier instructions, and had tried to make Butler see the matter in the proper light when he wrote on October 30:

By your instructions you are at liberty to apply as much of the five millions as will liquidate all claims within the Territory where the requirement has been complied with in its conditions. . . Be careful therefore on this point to throw upon the government of Mexico the extinguishment of all titles the conditions of which have not been completed diminishing as far as you may think it *safe and proper* for this object, all that remain of the five millions.

What Jackson emphasized was not virtue but appearance thereof and safety. He seems to have understood from Butler's October letter that Butler had mentioned Jackson's name perilously to the "shrewd man," though Butler does not clearly say that he had been quite so indiscreet. The "hero of two wars" feared a trap, and so "This," he writes on November 27, "was what your discretion by my private letters was drawn to—but my dear Sir, be careful lest these '*shrewd fellows*' may draw you into imputations of attempting to bribe." We must "have a boundary without imputation of corruption." Jackson is the soul of virtue on at last "discovering" Butler, who has transcended the "discretion" given him. Butler must be severely taught not to involve Jackson's sublime reputation.

As Butler's plain-spoken notes of September 14, 1833, and July 18, 1832, had not ruffled the noncommittal Jackson, the latter's "care and astonishment" on receiving that of October 28, 1833, must have been chiefly due to Butler's involving the President in Mexico and in a letter in the public mails and also to the slimness of the chance of a cession. Butler replied in February, 1834, with injured air that he had more than once previously avowed his plan of using a large sum "in conciliating, or corrupting if you please, influential individuals to aid me in the object . . . without which I saw that a successful negotiation for Texas was out of the question." Never dissenting, Jackson had said "it was a matter of *no consequence* to the Government how the money was disbursed. Now I beg you Sir to weigh these expressions of yours, and then say whether they admitted of a different construction than that which I gave to them." Jackson seems never to have answered this request. Butler gave Jackson no news when he added that "bribery is not only common and familiar in all

ranks and classes, but familiarly and freely spoken of." A Mexican Senator had assured him: "If you mean to succeed, you must begin with an offer of about *two hundred thousand dollars* to the President himself."²⁶

On December 20, 1833, Butler wrote privately:

Genl. Santa Anna has studiously avoided any conversation with me on the subject, and although he has intimated to some of my friends whom I have procured to speak with him on the subject, that he is himself personally well disposed to adjust the boundary in a satisfactory manner with us, that still he dreads public opinion should he yield any part of what is considered Mexican Territory, and notwithstanding that I have explained fully and clearly the mode by which the act may be done without attaching to him the slightest blame, still he plays off in such a way as to induce me to believe that all his professions are alike insincere. A difficulty presented by the difference of opinion between the Commissioners or some tumultuary movement in the Colony itself, is the only thing in my opinion to bring them right on the subject.²⁷

The commissioners referred to never met to survey the Sabine boundary. Late in 1833 and early in 1834 Butler urged Jackson to take forcible possession of the "disputed" territory between the Sabine and the Neches, declaring that such an act would incite the Texans to revolt; and he was willing to be put in charge of the force himself. On October 2, 1833, he alluded to the famed "hint" of authorization which General Jackson had asked of President Monroe in 1818 to seize Florida: he wanted a similar hint *in re* Texas:

I will Negotiate or fight just as you think best. I am frank and speak to you in all the Confidence of an old and tried friend when I say that my preference is for the latter. We have abundant cause for quarrel and it would cost less by one half, aye two thirds to take, than to purchase the Territory. In truth to take it would cost nothing. . . Santa Anna is a vile hypocrite.²⁸

It may be noted, with regard to Butler's allusion, as a further indication of Jackson's dishonesty, that Jackson's claim in 1831, through the mouth of John Rhea, that Monroe in 1818 had sent

²⁶Butler to Jackson, February 6, 1834, in Bassett, *op. cit.*, V, 244-247.

²⁷Butler to Jackson, December 20, 1833, MS., in the Texas State Library. On Butler's convenient "mode" see note 35 below.

²⁸Butler to Jackson, October 2, 1833, in Bassett, *op. cit.*, V, 215.

him privately by Congressman Rhea the desired authorization to seize Florida was pure fabrication, backed by a forgery.²⁹

For benefit of history the pharisaical Jackson belatedly endorsed "What a scamp" on one of Butler's later letters urging a seizure of the Neches. But in reality he was not averse to an *ex parte* settlement which might be a step to further expansion, and wrote on November 27, 1833, that he must be told by Butler if the desired boundary was not obtainable, so "we may proceed to make one ourselves . . . and take possession of Nachedages."

His failure to make Butler viceroy in East Texas must have been heartrending: the Colonel had prepared the ground for revolution in Texas, hoping to further his diplomacy or perhaps gain himself in martial glory the fame sought in vain in diplomacy. His ambition to lead Texas was well known to the Texas leaders. Houston remarked in 1832 that Butler was "cutting some capers, or working some magic with his wisdom. Such men as he is would destroy a country and . . . he will never gain one! In the first place he is vain, and in the next, he is avaricious: and in a word, men cannot adhere to him and imbibe consistency, and confidence."³⁰ Early in 1834 Butler sent to Texas inflammatory letters signed "O. P. Q.," promising to reveal himself at the right moment, announcing the intended inspection of Texas by Almonte, dwelling on Texan grievances, and advising the colonists to burnish their weapons. He declared that Santa Anna had vowed shortly to send an army to "castigate" the insolent colonists "and in case they make the least resistance all their property will be confiscated and Texas will be converted into a desert."³¹ These fiery messages fell into the hands of General Almonte, who thought that Butler might have acted under "secret instructions" and recommended in his report in the autumn of

²⁹James Schouler, "Monroe and the Rhea Letter," in *Mag. of Am. Hist.*, XII (1884), 308-322; reprinted in Schouler, *Historical Briefs*, 97-120. The writer has an unpublished study of Jackson and the Rhea Letter based especially upon the Jackson Papers, which Schouler was unable to examine. Jackson's friends and biographers have either believed the false story or believed that Jackson was *honestly* mistaken. To the writer, Jackson's deliberate falseness seems placed beyond question by the evidence. Cf. Schouler, *History of the United States* (ed. 1894), IV, 37, 38, and notes.

³⁰Houston to James Prentiss, June 27, 1832, in Houston-Prentiss MSS., in The University of Texas Archives.

³¹J. M. Winterbotham, "Stephen F. Austin and Anthony Butler: Some Texas Correspondence," in *Miss. Valley Hist. Rev.*, XI, 109-118, 125, 126; cf. Barker, *The Austin Papers*, III, 73, 93; *Texas Almanac*, 1859, p. 32.

1834 that Butler be exposed to his government and his removal thus be effected.³² But it seems that Santa Anna opposed this.

Butler wrote in June, 1834, with renewed optimism, that after an hour's talk with Jackson he could be "much more useful" and "close the whole affair to your entire satisfaction in 90 days." There is evidence that the Mexican government was contemplating a cession.³³ In November Santa Anna sent Alaman to Butler to talk about a means of getting money by ceding territory. In the spring of 1835 Butler wrote Jackson that all was ready for consummation in three months with "but one stumbling block in the way, which you must remove." He left for Washington on April 29, 1835, and in June showed Jackson in private that Texas was ours "simply by modifying a disbursement of the money to be paid." In his written statement he said that Santa Anna had always shown him great friendship but had never answered his Texas overture in 1833: "The motive for this silence is no longer an enigma; it has been satisfactorily explained by the Author of the enclosed letter, and will be explained."³⁴ The enclosure was a note from Santa Anna's agent, Father Hernandez, of March 21, 1835, which promised everything:

The negotiation which you have so long desired to effect is, as I have often told you, perfectly within your power; nothing is required but to employ your means properly. Five hundred thousand dollars judiciously applied will conclude the affair, and when you think proper to authorize me to enter the arrangement depend upon my closing it to your satisfaction.³⁵

³²Almonte to Minister of Relations, July 22, 1834, and *Calendar of H. R. Wagner MSS. Collection at Yale University*, 97; copies in The University of Texas Archives. See Frances Kellum, "The Visit of Colonel Juan N. Almonte to Texas in 1834," in *Bull. of the East Texas State Teachers College*, XIV (1932), 128-146.

³³Butler to Jackson, June 6, 1834, cited by Barker in *Am. Hist. Rev.*, XII, 796; cf. Butler's letters of October 20 and November 21, in *Ho. Ex. Docs.*, 25th Cong., 2nd sess., No. 351, p. 542, and Bassett, *op. cit.*, V, 299, 311; J. Gutierrez to Van Buren, New York, May 29, 1834, in Van Buren MSS. (in the Library of Congress), for a copy of which I am indebted to Professor Barker; Austin to J. F. Perry, Mexico City, October 6, 1834, in *Miss. Valley Hist. Rev.*, XI, 123-125.

³⁴Butler to Secretary Forsyth, June 17, 1835, in Justin H. Smith transcripts from the State Department, in The University of Texas Archives. The Smith collection is made up of notes and transcripts on which he based his *War with Mexico*.

³⁵Butler had sought in 1833 to have the Federal congress make Texas a "territory" so as to facilitate a cession—a plan Austin, then a captive in

Butler says that the President gave him private permission to use bribery, provided it was without his direct official cognizance, and authorized the use of \$500,000 to buy men, \$200,000 to go to Santa Anna. When this was recalled to Jackson by Butler in 1843, the Old Hero was silent, merely averring in an endorsement on Butler's letter, for the benefit of posterity, that its author was a "liar." The substantial truth of Butler's version, however, seems attested by the evidence.³⁶ And his honesty is less suspect than Jackson's.

Butler told Jackson that the Mexicans had stated:

We will enter into the Treaty, make the transfer and place the Country in the possession of your Government, but as Congress may refuse to ratify the Treaty we wish to know whether Gen. Jackson will consider the possession we give him as performance of the Contract on our part and will pay the Money.

Jackson replied, says Butler: "Yes Sir, if they will sign the Treaty and give us possession I will undertake to keep it." The General believed Butler would succeed:

The last interview with Colonel Butler . . . the President was brought to believe by Colonel Butler that he would succeed in his mission for the President told him expressly that if he was not certain of succeeding he had better not return to Mexico.—He expected to reach Mexico in July, 1835.³⁷

Secretary Forsyth told Adams in 1837 that Butler "came back here once all of a sudden, and made the General believe that if he would give him sufficient authority he would not only make

Mexico City, opposed and did much to defeat. G. L. Hammeken, "Recollections of Stephen F. Austin," in *The Southwestern Historical Quarterly*, XX, 370-375. Probably it was this plan that Butler recommended to Santa Anna as a mode by which he could cede Texas with a minimum of public criticism (see note 27 above). It was perhaps finally in accordance with this idea that Santa Anna held out hope in 1835 of making Texas a territory so as "to separate her from Coahuila, in order that the people might be considered as foreigners." D. G. Wooten, *Comprehensive History of Texas*, I, 163.

³⁶Butler to Jackson, July 28, 1843, stating their past relations, with Jackson's equivocal endorsement, in Jackson MSS. (in the Library of Congress); photostatic copy in The University of Texas Archives. Schouler was also convinced that Jackson connived in 1835, as before, at Butler's bribery method. "The Jackson and Van Buren Papers," in *Atlantic Monthly*, XCV (1905), 220.

³⁷Jackson's endorsement on Butler to Forsyth, January 15, 1836, MS., in State Department, kindly furnished by Professor Barker.

the proposition, but would accomplish the object. He was furnished with the authority, sent back, . . . His reliance had been upon what he believed was the disposition of Santa Anna."³⁸

Soon after Butler's departure Jackson was intimately reported as having confided his views on Texas to ex-Governor Hutchins G. Burton of North Carolina as follows: "We *must have it* either by negotiation or force; if 10,000 men would not do it, 100,000 should, and it was his intention to make said Burton first governor of the Territory." The abolitionist David Lee Child says that Jackson made the same statement to others within a few weeks during August, and that Burton gave this information to his acknowledged colored son, an educated abolitionist of Philadelphia, on a visit to him immediately after his conference with Jackson.³⁹ Yet the President had already promised the first Texas Governorship to Butler, who, irritated by the Probus pamphlet in 1843, wrote Jackson:

You moreover *voluntarily promised* me the Government of Texas—I did not ask it—but the pamphleteer states that you had offered it to a Mr. Burton of No. Carolina, who had accepted—and thus Sir if the aousive writer states what is a fact then you deceived me, and disgraced yourself—but this is so little like what I had a right to expect from you, and did expect from you, and the writer states so many palpable unblushing falsehoods, that I am constrained to add this to the number, and to acquit you of the double dealing it would so positively establish.

The Old Hero's militant statement to Burton would be only in keeping with his unscrupulous assurance to Butler that if the executive of Mexico "will sign the Treaty and give us possession I will undertake to keep it." It may be noted that Jackson sent Colonel John A. Parker of Virginia on a secret mission to Texas in 1835 in connection with its anticipated independence and annexation.⁴⁰

³⁸Adams, *Memoirs*, IX, 377, 378; see note 46 below.

³⁹D. L. Child to Almonte, September 15, 1835, in H. E. Bolton, *Guide to the Archives of Mexico*, 360; [Child], *The Texas Revolution, and the Late Outrage in California*, by Probus (1843), 7. Child says that Burton bought forthwith 40,000 acres of Texas land and advised his son to move there. Adams speaks on many occasions of Jackson's promise of the Texas Governorship to Burton. See also Memucan Hunt to Forsyth, September 12, 1837, in *Ho. Ex. Docs.*, 25th Cong., 1st sess., No. 40, pp. 14, 15.

⁴⁰*Virginia Historical Magazine*, XIII, 81, 82. It seems that General John T. Mason's mission to Texas, 1831-34, had a semi-diplomatic character under Jackson's good auspices. Mason largely effected the practical annulment by

To conceal his complicity in Butler's return to the bribery game, Jackson equivocally endorsed Butler's written statement of June:

Nothing will be countenanced by the executive to bring *this government* under the remotest imputation of being engaged in corruption or bribery . . . we have no concern in the application of the consideration to be given.⁴¹

This endorsement has led students to think that Jackson completely disapproved of bribery and allowed an admonished and circumscribed Butler to return to Mexico because he wished to go. Probably in reality it again instanced Jackson's old policy of outwardly repudiating Butler while secretly conniving at his necessary intrigue, eager to reap its fruits. If discredited, Butler could be cast off like a used garment—as he was, in fact.

That Jackson should send Butler back disapproving of his plan is highly improbable. He knew well that there was no hope without giving the bribes called for. Yet we find that he had great expectation of Butler's early success. He was bitterly disappointed by Butler's delay and told the Texas revolutionary envoy in the spring of 1836 that but for the Colonel's "delay and misconduct Texas would have belonged to this *Government* before this war broke out and sir . . . be not surprised if I yet soon announce a cession by Mexico of Texas."⁴²

Before returning to Mexico Butler went to New York seeking a lucrative agency for the New York Texas-land speculators and more ample means of "facilitation" than the \$500,000 he says Jackson allowed. It would seem that this secret leaked out, for one circumstantially informed of the movements of those interested in Texas wrote from New York that Jackson thought Mexico would sell for some millions and "Butler was commissioned to sound the Mexican ministers and see if an offering to them and to Santa Anna of half a million dollars could bring this

Mexico of her anti-American immigration law of 1830. K. Mason Rowland, "General John Thompson Mason," in *Quart. of the Tex. State Hist. Assn.*, XI, 163-198; L. T. Hemans, *Stevens Thompson Mason, the Boy Governor of Michigan*, 53, 54.

⁴¹Reeves, *op. cit.*, 74; Barker in *Am. Hist. Rev.*, XII, 797. My italics. Cf. Adams, *Memoirs*, XI, 351, 358, 370.

⁴²W. H. Wharton to Austin, June 2, 1836, in Barker, *The Austin Papers*, III, 363, 364.

transaction to a conclusion."⁴³ Butler told Prentiss that a cession was now ripe and offered his services to gain a treaty in which he would "protect and secure" the speculators' land titles, for a consideration. Butler was accordingly authorized to offer Mexico \$10,000,000 for a cession of the territory east of the Rio Grande to the United States. He was given \$5,000 forthwith, and promised further money and Texas lands if successful.⁴⁴ Then he left.

But instead of flying to Mexico with delightful promptness Butler went through Texas, and dallied there during September and October, probably furthering the revolution then beginning. According to reports sent Tornel Butler would seem to have been in every place where disturbances occurred and to have been there just preceding them. The natural inference of the Mexicans was that Jackson had expressly sent Butler through Texas to incite a revolt. On October 26 he arrived at Matamoras, circulating revolutionary manifestos and "exaggerating" the rebels' strength. On the 29th he hastened on, still hoping to buy Texas.⁴⁵

Butler wrote Jackson significantly in late October that the new turmoil made "it impracticable to bring to a close the negotiation intrusted to me within so short a period as was anticipated when I left Washington," and in November declared himself hopeful, although the "new state of things . . . may require a little more time, and certain changes in the mode of conducting it and the agents to be employed."⁴⁶ Butler had told Jackson in June that

⁴³"A friend of Mexico" to the Mexican Foreign Minister, New York, November 5, 1835, in The University of Texas transcripts from the Mexican Archives.

⁴⁴James Prentiss to Butler, New York, July 27, 1835 (three documents on different aspects), and Prentiss to Butler, September 20, 1841, in Butler MSS.

⁴⁵Emilio del Castillo Negrete, *Mexico en el Siglo XIX*, XXII, 125-131, 140-142. Prentiss's letter of September 15, 1835 (in Butler MSS.), in reply to Butler's from Alabama of August 12, shows that Butler's decision to go by way of Texas was an afterthought. Butler explained to Forsyth on November 28 that he had been forced to stop by a fever "from the effects of which I, at one time, despaired of ever reaching Mexico." *Ho. Ex. Docs.*, 25th Cong., 2nd sess., No. 351, p. 564.

⁴⁶*Ho. Ex. Docs.*, 25th Cong., 2nd sess., No. 351, pp. 567, 564; Adams, *Memoirs*, XI, 344. In early December Secretary Forsyth told the Mexican *chargé* at Washington that Butler had been permitted to return to Mexico "because of the securities which he gave showing that it would be easy to bring to a head all the necessary means and enter with excellent hopes of a good conclusion into the negotiation concerning the sale of Texas." Castillo to his government, December 5, 1835, in Negrete, *op. cit.*, XXII, 139, 140.

California could be purchased after Texas for an extra half million, and Jackson had such hope in Butler's diplomacy that he instructed him on August 6 to try to secure as boundary the Rio Grande to the 37th parallel and a line thence running westward to the Pacific for an extra \$500,000.⁴⁷

Butler's mission ran its course quickly. His imputed intrigues in Texas at the beginning of the Revolution caused Mexico to demand his recall, while his fatal delay caused Jackson to offer him as a burnt sacrifice without ceremony. Secretary Forsyth, who had a tiff with Butler at Washington in June, was the willing instrument of repudiation. Butler attributed Forsyth's instructions of July 2, 1835, which told him to return by December, as an act of personal spite; he claims that Jackson told him orally to stay as long as was necessary. He did not realize fully that Jackson was repudiating him, and therefore took a parting shot exclusively at the detested Forsyth:

How far the failure in effecting the object, may be attributed to the indiscretion of certain persons who affect to be in the President's confidence to retail his opinions and declare his purposes will be for after times to disclose. I am in possession of all the facts—and a precious collection they are. This and the movement in Texas suspended for the moment all my operations. Those upon whose coöperation I relied for success advised such a course; and just at the period when a favorable moment presented itself to renew the work, I am discharged from office.⁴⁸

The Colonel wrote Jackson inquiring if Forsyth's letter limiting him to December was authorized, adding that in any case he would "remain and continue my efforts for a private association of Individuals. . . I shall attain the object by being allowed a reasonable time." He told the President of his agency for the New York company, the latter "not knowing that the Government is in pursuit of the same object."⁴⁹ Butler declared to Jackson in 1843:

⁴⁷Reeves, *op. cit.*, 73, 74; Forsyth to Butler, August 6, 1835, in *Cong. Debs.*, XIV, Pt. II, App. 131; Adams, *Memoirs*, XI, 347, 348, 344.

⁴⁸Butler to Forsyth, January 15, 1836, in *Ho. Ex. Docs.*, 25th Cong., 2nd sess., No. 351, pp. 573-575; *Cong. Debs.*, XIV, Pt. II, App. 131; Butler to Jackson [November-December], 1835, in Bassett, *op. cit.*, V, 375-377.

⁴⁹Butler to Jackson, as cited in note 48. It might seem that Butler made use of the New York speculators' ten-million offer, from Santa Anna's statement to Wharton at Washington in January, 1837, that thirteen millions was the highest sum which "the United States" had ever offered for Texas. G. P.

It is a positive fact that after the battle of San Jacinto *the transfer was again proposed to me*—and we should have saved the \$200,000 designed for Santa Anna—but as Mr. Ellis had arrived and had charge of the Legation I could take no step myself, and I left him to manage for himself.—He sought no aid from me—I was not disposed to volunteer in *his service*, and cover him with the credit of a negotiation that I had labored years to effect.—And the New York Company could then have made the purchase, as it was in the market for anyone—But as Texas had declared itself *Independent* a private Company could not compel the Texians to recognize their claim to the domain of the Nation, and they declined to make the purchase altho' urged to do so. . . Whether the offer was ever made to Mr. Ellis I am not able to decide—but as he was a stranger to the Agents employed and moreover neither spoke nor understood a word of the language it is probable he heard nothing of the matter, as on such subjects it is not customary to *speak through interpreters*—it is a matter of too much delicacy and danger.

Butler spent the rest of his life in Texas after the diplomatic failure, which had only served to keep him from private enterprise. He had made a contract with Zavala in 1829–30 to colonize a Texas grant, by which he said long after "I should have realized at least \$100,000, perhaps much more—All this was lost—sacrificed . . . 7 years of my life sacrificed in a period when time was everything, and then exposed to reproach and all sorts of misrepresentation . . . and malignant falsehood."⁵⁰ The dark shadow of the Mexican mission hung over him in politics, and he wrote in vain to Jackson in 1839 asking for a modicum of justice in correcting misrepresentations. Jackson's own reputation was too precious. Again, when *Probus* came forth in 1843, damning those connected with the Texas "plot," Butler appealed twice to Jackson for justice, asking permission, as an alternative, "to use such extracts from his private letters to me as was necessary for explanation and refutation of the false and malicious remarks of *Probus*." Jackson did not move. "I was compelled to suffer . . . I felt indignant at the General's conduct." On July 28, 1843, he wrote the "Sage of the Hermitage" that he might publish in self-defence certain extracts without permission, as the sacredness of "private" correspondence had been destroyed by Jackson's having

Garrison, ed., *Diplomatic Correspondence of the Republic of Texas*, I, 188, in *Am. Hist. Assn. Report*, 1907, II.

⁵⁰Butler to Poinsett, Scott, &c., July 8, 1846, in Butler MSS.; this letter seems to have been written for publication. See W. S. Cleaves, "Lorenzo de Zavala in Texas," in *The Southwestern Historical Quarterly*, XXXVI, 29–40.

placed some of *Butler's private letters* in the public archives to his great discomfort. Butler says:

These extracts might have afforded materials for opening a new Battery agst. Gen. Jackson, and the pamphlet was evidently designed to provoke me to publish—as it frequently contained such remarks as the following—‘We suffer much for want of the letter [of Jackson’s] to which this [of Butler’s] was the answer’—‘If we had access to the whole correspondence of which this is a part, we should be able to exhibit the true character of this man so little understood, his corruption. . .

Butler also observed in 1846 that when he should write up the Mexican negotiations “my reputation will be advanced,—and I add it will be well that as much may be truly said for the reputation of Gen. Jackson thereafter.” One or two of the General’s letters “would greatly lessen his reputation *in the estimation of the whole moral world if published.*” Butler, though disgruntled at being left to shoulder the whole invidious responsibility, never published.⁵¹

Colonel Butler came nearer perhaps to attaining the great object than is usually believed, and his methods were neither so crude nor offensive as writers have pictured them. Mexican historians show that the Mexican public, not informed of Butler’s bribery methods, berated him for his interference in Texas merely; he used some *finesse*, offering “gifts” where they were called for or would be acceptable. Historians have customarily cast Butler as a desperate scoundrel and abetted Jackson in making him the scapegoat of the episode, holding him alone culpable for its unsavoriness. With an aspect of subtle duplicity somewhat over Butler’s head, the affair seems but a characteristic phase of Jacksonian diplomacy and intrigue. No doubt the Old Hero felt justified in treating with Mexico on a less elevated plane—especially when it was merely planned to “regain our own.”

⁵¹An American sympathizer of Mexico wrote Almonte, December 21, 1846, of “Butler’s dirty intrigues . . . under the private instructions of the President of the United States, and his final effort to bribe to the amount of half a million. . . Butler’s ‘precious collection’ may be bought cheap, if you want it.” R. S. Ripley, *The War with Mexico*, I, 523. Butler’s papers were sold by his wife after his death as historical curiosities.

RECENT ARCHAEOLOGICAL DISCOVERIES IN THE TEXAS PANHANDLE

BY W. C. HOLDEN

Texas Technological College

Archaeological research by Texas Technological College during the last three years has thrown considerable light upon some of the native Texans of six hundred years ago. In the Panhandle of Texas a relatively advanced race lived in large substantial, communal houses built of stone, maintained a settled order of municipal life, and made various experiments in agriculture.

These people lived along the spring-fed creeks in the Canadian Valley from a short distance west of the New Mexico line to a point thirty or forty miles west of the Oklahoma line. Over a hundred ruins of houses varying in size from one room to three hundred rooms have been located and mapped by archaeologists. The discovery of a typical ruin is easy enough for an experienced person who knows the "ear-marks," but the average layman would perhaps ride over a ruin without being aware of it.

The existence of stone ruins in the Texas Panhandle has been known for about forty years. Professor A. F. Bandelier first reported them during the 90's. Professor T. L. Eyerly, teacher in the now defunct Academy at Canadian, Texas, privately published two brief accounts describing surface remains of some of the ruins. Later, Dr. J. Walter Fewkes, attracted by Eyerly's reports, visited the vicinity and spent a short time there. Dr. Warren K. Moorehead of Phillips Academy, Andover, Massachusetts, made explorations and some excavations in the region, and published a brief statement of his findings in a pamphlet under auspices of Phillips Academy. Later (1930) he published a book entitled *Archaeology of the Arkansas Valley*, in which he devoted considerable space to the Canadian culture.

The University of Pennsylvania Museum sent Dr. J. Alden Mason and a party, and the American Museum of Natural History at New York sent Dr. Ronald L. Olson to make brief inspections. However, the man who has made the most extensive explorations and has the greatest general knowledge of the Panhandle culture is Floyd V. Studer of Amarillo. Mr. Studer has been making scientific archaeological explorations and observations in this region for twenty-three years. It has been a hobby with him,

and he has put in from one to two days at it practically every week of the year.

One of the chief contributions of Mr. Studer has been to secure leases of scientific rights from the landowners along the Canadian. This last spring he turned these leases over to the Panhandle-Plains Historical Society. The Society created a Department of Archaeology and Paleontology, and made Mr. Studer Director. Any person or institution wishing to do work in the Canadian vicinity must now do so under the auspices of the Panhandle-Plains Historical Society and under the direction of Mr. Studer. The Panhandle group is to be commended for taking these timely steps to forestall "pot-hunting" and to preserve scientific materials in the Canadian Valley.

Texas Technological College became interested in Panhandle Archaeology three years ago. Since that time the College co-operating with Mr. Studer has excavated two major ruins. The A-C ruin is located approximately forty-five miles northeast of Amarillo on Antelope Creek about six miles south of its confluence with the Canadian River. It contains twenty-nine rooms, and is a hundred and sixty three feet long and fifty feet wide. The B. T. K. ruin is located on Saddleback mesa about a mile and a half south of the Canadian River at Tascosa. It contains thirty-three rooms, and is a hundred and twenty feet long and approximately sixty feet wide. Both ruins were accurately mapped by engineers. The maps, pictures, and detailed reports of both ruins, as well as several thousand artifacts, are deposited with the Department of History and Anthropology at Texas Technological College.

The masonry in both ruins is of three types, slab-stone, horizontal, and a combination of slab-stone and horizontal. The slab-stone type is made by setting on edge two courses of slab-rocks, the courses being two to four feet apart. The space between the courses is filled in with abode and rubble. On top of the fill-in and offsetting inside the two rock courses are placed two other rows of slab-stone which are filled in between. In this way the wall is built four or five courses high. The average slab-stone outside wall is from three to four feet thick at the bottom, and "pyramids" in to a thickness of six inches at the top. In one place in the A-C ruin, a major outside slab-stone wall is still standing five feet high, with the top course missing. The horizontal masonry is usually crude with stones of irregular size placed in thick adobe mortar. The east outside wall at B. T. K.

however, is of horizontal masonry and is of unusually good workmanship, showing that the original Panhandle masons could do good work on occasion. The stones are sized and evenly placed. Often the inside partition walls are composed of a first course of heavy slab-stone upon which crude horizontal masonry is superimposed.

The flint-work of the Panhandlers was superb. Their source of material was the Alibates flint mine north of Amarillo. They made small, exquisitely fashioned arrow points which contrast vividly with the larger, cruder points of later Plains Indians. We infer that the cruder points were of Plains origin in that they are ones most commonly found on the surface throughout Northwest Texas. It is known that it was the Plains Indians who ranged this region during historic times. None of the cruder points were found below the surface at either A-C or B. T. K. ruin. At the A-C ruin all of the finer points were found more than two feet below the surface. At the B. T. K., ruin the finer points were evenly distributed from the bottom to the top of the debris. The Panhandlers made many double-beveled knives with four edges, shaped something like an aeroplane propeller. These knives varied in length from three to five inches. Such knives are not peculiar to this culture. Professor J. E. Pearce reports that they are found on the surface in Central Texas and in the top stratum of the kitchen middens of that region. These people had numerous hide scrapers of Alibates flint varying in size and shape. The dominant type differs from the snubnose scraper of the Plains Indians in that it is thin and finished with a fine process. In the Plains flint collections of Dr. Cyrus N. Ray and E. B. Sayles of Abilene the snub-nose scraper is dominant, while the thin Panhandle type is rare.

Artifacts of bone are plentiful, the most dominant type being bone awls. These were made mostly from the shin bones of antelope, the leg bones of turkeys, and the rib bones of larger animals. A considerable number of decorated bones with grooves cut cross-wise have been found. Several stag-horn pressure flakers with which they fashioned their flint implements were excavated.

They made spades from buffalo femurs to use in the cultivation of their corn patches.

The Panhandlers used distinctly Plains methods in their pottery construction. Plains pottery is usually recognized by its color and decoration. The pots were made of a grey material and carried textile impressions. The impressions were commonly made

with the "hammer and anvil" method, the "hammer," or mallet, having a piece of grass fabric stretched over it. In some cases an orange color was gotten as a result of the firing process. In rarer instances a red color was obtained by the use of a red wash. But whether grey, orange, or red, every piece had fabric impressions. The pottery was tempered with coarse sand and mica, and an analysis shows it to be harder than Pueblo pottery.

The Panhandlers smoked pipes of both soap-stone and pottery construction. In both cases, however, pipes were, no doubt, trade articles procured at a considerable distance, as soap stone is not found in the region and the grain of the pottery pipes was so much finer than that used in their ordinary pottery that it is difficult to believe that the Panhandlers made the pipes. These Indians were fastidious about their ornaments. They had to have turquoise pendants, necklaces, and inlaid turquoise objects, materials for which could be had only from the Cerrillos mines near Santa Fe, also, certain kinds of shell beads, material for which came from the Pacific Coast. The shell in the beads was identified as having come from the Pacific Coast by the staff of the Laboratory of Anthropology at Santa Fe. The Panhandlers used home-made objects of decorated bone, rattles made by placing small, polished, black pebbles in terrapin shells, and necklaces of bone beads.

The chief source of food was doubtless buffalo meat. The vast amount of broken bones evenly distributed through the dump-heap immediately on the north side of B. T. K. ruin indicate that the stonehouse inhabitants were great meat eaters. In addition to buffalo, they had deer, antelope, bear, turkey, and small wild game. A rather important secondary source of food was agriculture. On little, subirrigated areas along the creeks and the Canadian River they raised corn which they ground on metates and cooked over open fire-places. A considerable number of fire-pits were found in the floors of both ruins. They varied from twelve to twenty-four inches in diameter and from four to sixteen inches deep. They were all filled to various depths with ashes and charcoal.

For three years Texas Tech has been working on the problem of who these people were, where they came from, when they were here, how long they stayed, where they went, and why. We, fortunately, found the answers to some of these questions this summer. During the month of June, fifteen students from Tech completely excavated the B. T. K. ruin. This ruin was of particular

interest in that it "stair-stepped" up the steep side of a hill, and when occupied gave the appearance of being an eight-story terraced building of the Pueblo type. The appearance was deceptive, however, in that at no place was the house over one story. The ruin also had a deep dump-heap varying from two to twelve feet in thickness at the foot of the cliff on the northeast side of the ruin. The dirt was all screened, and the chief value of the materials is to be found in the completeness of the excavations. At the close of the season all of the materials were taken to the Laboratory of Anthropology at Santa Fe, where we studied them in consultation with the laboratory staff. Director Jesse Nusbaum and Dr. J. P. Mera were extremely interested in our problem and exceedingly helpful to us in dating our finds. The most important thing we did at the laboratory was to date the Panhandle culture. Among the materials were about two dozen Glaze 1 and Biscuit A pot shards. They differed so distinctly from the dominant type of pottery that they are doubtless fragments of trade ware. Glaze 1 and Biscuit A were made only by the Pueblo Indians of the Rio Grande drainage. By the tree-ring science it has been ascertained that these wares were first made about 1350 A.D. Pottery is a fragile thing and ordinarily does not last long when in use. It is highly probable, therefore, that the Panhandle Indians were contemporary with the Glaze 1 period of Pueblo history. Inasmuch as the Panhandle houses were in such a state of ruin by 1540 that the Spaniards under Coronado passing through the region at that time made no mention of them, it is probable that the houses had been deserted for a considerable length of time. We may deduce, therefore, that the sedentary Panhandle culture flourished in Texas approximately from 1350 to 1450 A.D. The fact that neither of these two larger ruins was built much earlier, if any, than 1350 does not necessarily prove, however, that the inhabitants had just arrived in the Canadian Valley. They could have been there for generations before they began building permanent homes. The discovery of the comparatively recent date of the ruins was a great surprise to most of us who have been working in the Panhandle, and it completely upset our previous theories.

Some of us had formerly thought that the Canadian culture was an eastern expansion of an early Pueblo people shortly after the Christian era. The discovery, however, that they are contemporary with a late Pueblo period puts them in an entirely different

light. Their distinctive type of pottery indicates they are non-Pueblo. It is highly probable that they were a people of Plains or Eastern origin. Incidentally, their pottery has a marked resemblance to the pre-historic pottery of Tennessee and North Carolina. They wandered into the Canadian Valley, and found conditions there conducive to sedentary life. The broken country and the fresh water creeks of the Canadian Valley made the vicinity ideal for buffalo at all seasons of the year. With a permanent meat supply, the newcomers could settle down. They either brought knowledge of corn culture with them or borrowed it from the Pueblos to the west. With corn to cultivate there was all the more reason why they should stay in one place, as they had constantly to guard their corn fields against buffalo, antelope, and deer from the time the corn was planted until it was harvested.

They began to think of permanent homes. If they came from the east, they probably brought a notion of permanent homes, pottery-making, and corn culture with them. A sedentary life encourages an accumulative culture. Once they settled down, they began to make rapid strides towards civilized life. A brisk trade sprang up with the civilized peoples to the west. Buffalo hides were traded for turquoise and pottery. Among other things the Panhandlers borrowed from the Pueblos was Pueblo architecture. The Panhandlers were cruder artisans, but they were learning fast during the relatively short period they were here. A ruin with almost 300 rooms within fourteen miles of the B. T. K. ruin indicates the progress they were making.

It is highly probable that the Panhandlers borrowed social institutions from the Pueblos. Several hundred people living in a communal house could not have gotten along very well without rather high governmental and economic systems. As community life became more and more complicated it was natural for the people to turn to the existing systems not so far away to the west for models. No doubt before they left the Canadian Valley the Panhandlers were becoming "puebloized." The word "Pueblo" has a cultural significance, as is evidenced by the fact that the Pueblos today are descendants of four distinct linguistic groups. Two adjacent Pueblo peoples may not be able to talk to each other except through the common medium of Spanish.

The question still remains as to what became of the Panhandlers. After they evolved such a civilization, what caused them to completely disappear? In time we may be able to answer

that, but at the present we can only guess. There are two probable causes—drouths and hostile pressure. The cyclic, erratic nature of Texas weather may have caused them to starve out and to start wandering again. With the return to nomadic life they left behind the inventions they had accumulated, and no longer had need of the recently acquired social institutions. On the other hand, pressure from more warlike neighbors may have caused the Panhandlers to leave the Canadian Valley. They may have retreated westward and become amalgamated with the Pueblos of the Rio Grand area, or they may have been forced in some other direction, and once out of the region where they could obtain a livelihood in a sedentary manner, they lost those traits which had made them distinctive. Years of careful work may be necessary to determine what became of the people, and again we may never know.

BOOK REVIEWS

EDITED BY O. DOUGLAS WEEKS

The University of Texas

Boudin, Louis B., *Government by Judiciary*. (New York: William Goodwin, Inc., 1932; 2 volumes: Vol. I, pp. xv, 583; Vol. II, pp. 579.)

This is a very interesting piece of work, extensively documented and laboriously elaborated with the avowed purpose of proving that the power of the courts in reviewing litigated legislation is an usurpation by the courts and has ended in the destruction of the doctrine of separation of powers and consequently government by the judiciary. The spirit of the discussion is such as to preclude the conclusion that the investigation is scientific in character and forces one to regret that such effort was expended in a partisan manner.

The inquiry begins with the early state precedents set by state courts prior to the holding of the Federal Convention of 1787. These precedents have been ably reviewed and interpreted by such scholars as A. C. McLaughlin (*Confederation and Constitution*), C. A. Beard (*The Supreme Court and the Constitution*), and C. G. Haines (*American Doctrine of Judicial Supremacy*), all of whom reach the opposite conclusion of Mr. Boudin, when all students of American government and politics know that Beard and Haines would naturally decide with the author of the present work if the facts were not overwhelmingly convincing to the contrary. The author ignores the conception of natural law as a fundamental limitation upon legislative bodies which students of American political theory know was the basis of the American Revolution and fundamental in the establishment of our own constitutional system. The written constitution, in the minds of the Founding Fathers, became the substitute for the doctrine of a natural law and hence a paramount law which legislatures could not transcend without destroying their own foundations. If legislatures were to be forced to obey such fundamental laws, they could not be the sole interpreters of them because this would mean that their discretion would become the law itself. The doctrine of a limited government required an additional check. Our forefathers felt that the Parliament of Great Britain had violated their fundamental rights and were determined that their own legislative bodies should never be able to exercise such powers without a remedy other than revolution or the overthrow of a government. Since these rights were regarded as legal in character, it was logical to think of courts as the remedy rather than the ballot box.

The author pays scant attention to the minutes of the Federal Convention and of the state ratifying conventions which are, according to the leading American historians, positive evidence that judicial review was a feature of the new constitutional system. This was so stated in the Federal Convention, in more than one of the ratifying conventions, and in the *Federalist*. When it was proposed in the convention that there should be a General Council of Revision of Legislation in which a convenient number of the justices should have membership, it was pointed out by Luther Martin that this would be improper as the justices in the regular exercise of their judicial functions

would pass upon the validity of legislation and that if they were members of the Council of Revision, they would exercise this power twice.

The author pays his respects to *Marbury v. Madison* at length, pointing out that Marshall based his decision in this case on the fact that the Constitution was written and that his conception of judicial review, being inherent in written constitutions, has been proved false since the written constitution has become almost universal and judicial review has not followed in its steps. It should not be overlooked that written constitutions of foreign countries are not regarded in the American sense and that they generally provide for legislative supremacy in providing for responsible cabinet government. Would judicial review be compatible with responsible cabinet government? It is hardly conceivable that judicial review could obtain under an unwritten constitution. Moreover, it is difficult to see how the Federal courts could have jurisdiction of all cases or controversies arising under the Constitution without being able to consider the Constitution, and if they are to consider the Constitution, what are they to do in cases when an act of Congress or of a state legislature conflicts with the Constitution? What is the object of this jurisdiction if it is not to eliminate such conflicts? How can this be done without nullifying either the Constitution or the legislative act? The reviewer must confess that the case against judicial review being an intended part of our constitutional system is not convincing.

The main thesis of the work, that we have government by the judiciary, is granted without argument. Any student of our system who has gotten beyond the elementary stage of development knows that our courts, particularly the Supreme Court of the United States, legislate at times and that they reverse their policies when the *vox populi* becomes very resonant. The Reconstruction cases, the slaughter house cases, the insular cases, the legal tender disputes, the income tax cases, the cases dealing with the contract clause, due process, and labor disputes, to mention only a few representative instances, are clear illustrations of the amendment of the Constitution by the Supreme Court. Let it be called a House of Lords or a National Economic Council. Don't we need one? How could we get a better one? Certainly not by popular election. If the American Senate will do its duty, the personnel of the Court and its opinions can be made to harmonize with public opinion insofar as that is desirable. The Constitution must be adapted to the rapidly changing facts of American life, and the amending process manipulated by our legislative bodies and party processes has certainly failed to meet this demand. My only objection to the Supreme Court is that it has not done enough of this kind of work and of the right sort. Of course, it has been afraid of politicians. The sooner it is frankly recognized that this is what we expect the Court to do, the better our constitutional system will be adjusted to our changing economic order and the greater satisfaction our political institutions will give us in their practical operation.

The great value of this work lies in its bringing together in useable form a wealth of material that will serve the student and teachers of government and constitutional law to an advantage and will help convince the simple-minded of the true nature of our flexible constitutional system. It is unfortunate that the work is not indexed.

C. PERRY PATTERSON.

The University of Texas.

Craven, Avery, *Edmund Ruffin, Southerner: A Study in Secession*. (New York: D. Appleton and Company, 1932, pp. ix, 283.)

White, Laura A., *Robert Barnwell Rhett, Father of Secession*. (New York: The Century Company, 1931, pp. ix, 264.)

The appearance of substantial biographies of two leading "fire-eaters" will be welcomed by students of Southern history. Rhett and Ruffin were radical agitators who exerted considerable influence upon their generation, and their biographies add materially to our knowledge of the events and forces that culminated in the stroke for Southern independence. Their careers present both parallel and divergent aspects. Each encountered alternate periods of popularity and eclipse, but where Rhett won success in the forum, Ruffin resorted to his pen.

Prepared for his task by earlier research in soil exhaustion and agricultural reform in Virginia and Maryland, Professor Craven has written an admirable volume. Admitting that "it is more as a type than as an individual that he deserves detailed study," the author correctly concludes that Ruffin was "the greatest agriculturist in a rural civilization" and "one of the first and most intense Southern nationalists." As such "his story becomes to a striking degree that of the rise and fall of the Old South." The study is, therefore, more than the biography of a scientific planter, and agricultural editor, and an over-zealous fire-eater; it is at once a masterly portrait and a vigorous interpretation of the factors that made the South distinctive. The author's easy and fluent style, his ability to see events in their proper perspective without annoying details, and the authoritative tone that pervades the whole study, cause the reader to lay the book aside with the feeling that his knowledge has been pleasantly enriched. In his research, Professor Craven relied heavily upon unpublished sources, including the Ruffin Diary, copious correspondence, the Marlbourne Farm Journal, and the Hammond Papers. These, together with Southern newspapers, Ruffin's own monthly—the *Farmers' Register*—and his contributions to other periodicals, constitute the most important sources of information. There is no bibliography; meager but well-selected footnotes are grouped at the end of the biography.

Already recognized as a progressive planter in Virginia, Ruffin was chosen at the age of 29 to the State Senate, but he resigned before the expiration of his term. "Too honest for intrigue, too stubborn to be manipulated, too sensitive to rebuff, he was not a success as a politician." But his discovery that the addition of marl would supply calcareous matter so necessary to much Southern land gave him "good claim to be called the father of soil chemistry in America." To educate agrarians he established in 1833 the *Farmers' Register*, and he also contributed to other Southern agricultural periodicals. Unappreciated by conservative Virginians, Ruffin accepted the invitation of Governor Hammond to act as agricultural surveyor of South Carolina, a position he was soon forced to resign because of poor health. He was a Southern nationalist and a secessionist in the 'forties; during the next decade he labored to make the South economically and commercially independent of the North. He used John Brown's raid to stir Virginians to action; he rejoiced when the Democratic party split at Charleston, for another tie that bound the Union together had been severed. Disgusted with the conservatism of Virginia in the crisis of 1860, he exiled himself from his native state, removed again to South Carolina, joined the Palmetto Guards,

and was awarded the honor of firing the first gun upon Fort Sumter. Torn by grief and anger after four years of war, he ended his own life, perishing with the cause he had done so much to agitate.

Doctor White's study of Robern Barnwell Rhett, a part of which was presented as a dissertation at the University of Chicago, was brought out under the auspices of the American Historical Association. It is a scholarly and well-balanced work, but it lacks the polish and clarity that Professor Craven's book possesses. The bibliography shows a wide range of research with chief resort to manuscript sources and newspapers.

Service in the State Legislature and a quadrennium as Attorney General of South Carolina were followed by election to Congress in 1836, where Rhett remained until 1849—a representative from the Beaufort-Colleton district. As an ardent nullifier his doctrines were acquired from Turnbull and Hamilton, and not from Calhoun, who later became "his acknowledged political mentor." As early as 1838 Rhett favored a Southern convention to propose constitutional amendments as an alternative to disunion. Failing to secure it he persuaded himself that the Constitution was adequate to protect Southern interests if "the Democratic party could be forced to uphold the correct interpretation." Believing that Southern rights would be promoted by Calhoun's elevation to the presidency, he became his campaign manager and sought to make him the Democratic nominee in 1844. Unsuccessful in this, he inaugurated the Bluffton movement which demanded extreme action against the protective tariff and abolition sentiment.

During the secession movement in 1850 Rhett "openly and without reservation proclaimed himself a disunionist," and urged separate state action as a prelude to coöperation in the South. He was chosen to the Senate in 1850 to succeed Calhoun—a position he had long coveted. But when a state convention, called to consider South Carolina's relationship with the Union, repudiated his leadership by preferring coöperation to separate state action, he resigned his senatorship. During the remainder of the 'fifties Rhett set forth "The Menace of National Democracy," labored for a dissolution of the Democratic party, and hoped for Republican victory which would incite moderates to action. Doctor White emphasizes the opposition to extreme action and presents the difficult task of carrying the state out of the Union. Like other radical spirits in the South, Rhett was soon to find that he was without influence in the Confederacy he had done so much to create. Fearing "The Dread Spirit of Reconstruction" of the Union, he and the *Mercury* drifted into the opposition and freely criticized the Davis administration. It is disappointing that this portion of Rhett's career is treated so briefly.

Although Doctor White has not succeeded in unraveling all of the complex factors in the career of the South Carolina statesman, she has made a worthwhile contribution. It is to be regretted, however, that the figure and character of Rhett fail to stand out clearly because of detail and technique.

WENDELL HOLMES STEPHENSON.

Louisiana State University.

Laski, Harold J., *Politics*. (Philadelphia: J. B. Lippincott Company, 1931, pp. 160.)

Laski, Harold J., *Studies in Law and Politics*. (New Haven: Yale University Press, 1932, pp. 299.)

The first and smaller of these two books is one of the series, somewhat similar in character to the well-known Home University Library, called *The Hour Library*. It is professedly an introduction to the problems of politics. But if it is intended to be a book for those who are not widely read in this field it is neither a descriptive survey of modern governments nor a scissors and paste-pot rehash of what some dozens of other men have written on the subject. It is a systematic study of politics in the sense that the books of Hobbes, Locke, and Rousseau are systematic studies,—not description merely but representing a definite point of view, a coördinated group of arguments. His attitude here is that found in his much larger treatment of the same subject matter, *A Grammar of Politics*, and, for the most part, the *Politics* is a summary of the *Grammar*. Condensation frequently produces little save dullness. That can not be said of this example of brevity. The reviewer is doubtful about its value as a first primer for the totally uninitiated, but certainly anyone possessing even a modicum of interest in and knowledge of modern governmental structure and problems should find it anything but heavy going. In a style that is more direct and simple than that of the *Grammar*, Mr. Laski presents what is probably the most significant theory of modern political life to be found in English.

Since the book is itself a condensation it is extremely difficult to give anything like a fair picture of its content in a short review, but even a brief survey may convey some notion of its general argument. The first of its four chapters sets forth a contrast between the purely legal and what may be called the pragmatic view of the state. Needless to say, Mr. Laski strongly favors the conception of the state as a group of service agencies. Their value and right to continued existence are to be measured by their fruits, not by any simple legal test of validity. "The power of the state . . . must be capable of justification in terms of the demands it seeks to satisfy." (p. 38.) In the second chapter the author presents a vigorous argument for more widespread equality,—economic, educational, political,—"for a theory of the state which attempts the continuous socialization of law." (p. 74.) Here the combination of the older doctrines of individual rights with modern socialism is especially interesting. Chapter III deals with "The Organization of the State" and here, as in the *Grammar*, Mr. Laski advocates a modified version of the English system of government. The final chapter is devoted to defending the extension of the powers and functions of the existing agencies of international government.

The second book contains twelve essays previously published in various journals. Their subject matter is so varied that the reviewer can do little more than indicate their general character. The first three, excellent examples of the readable historical essay, deal with "The Age of Reason," "Diderot," and "The Socialist Tradition in the French Revolution." Then follow essays on subjects with which the author has elsewhere dealt, "The Problem of a Second Chamber," and "The State in the New Social Order." Five of the remaining seven are devoted to more or less legal problems, appointment to judicial office, judicial review of social policy, procedure for constructive contempt, and the relation of law to justice and to the state. Another deals with the political philosophy of Mr. Justice Holmes, and another, one of the most interesting and useful in the book, with the membership of the British Cabinet, 1801-1924. The social and political attitude underlying them is that

with which all readers of the *Grammar* and some of Mr. Laski's earlier essays are familiar. That is not to say that there is nothing new in the present volume, for most of the subjects here treated are ones with which he has not earlier dealt, at least at any length. The present group of essays are among the most suggestive and stimulating that he has written. And, at least to this reviewer, their style, like that of the *Politics*, is distinctly superior to that of some of the earlier books, no less brilliant, but simpler, clearer, and more effective.

B. F. WRIGHT, JR.

Harvard University.

Witte, Edwin E., *The Government in Labor Disputes*. (New York: McGraw-Hill Book Company, Inc., 1932, pp. xii, 352.)

These are days when a great many people who have never done so before are thinking about the problem of labor, and it is not surprising that many books on the subject are appearing. Mr. Witte's book is particularly timely, not only because of our general interest in labor, but because the recent Congress has placed on the statute books one of the most important pieces of labor legislation in recent years, in the Norris injunction bill. At least one ray of silver in the lining of our dark cloud of the present depression is the greater willingness of legislative bodies to enact reforms long demanded by organized labor.

This book does not purport to cover the whole relationship of government to labor; it deals, as the title indicates, with the question of labor disputes and their legal aspects, legislative, executive, and judicial. It considers common and statute law on the problem, the rulings of the courts, and the arbitration and conciliation work of administrative bodies. The effect of the Sherman Act, the Clayton Act, the Transportation Act of 1920, and other Federal laws, as well as of such interesting state experiments as the Kansas Court of Industrial Relations Act of 1920, is considered.

Organized labor in the United States feels that the government and the courts do not give it a square deal. Whether this feeling is justified or not, it cannot be denied, as Mr. Witte points out, that labor in America is subject to serious handicaps that are not found in Great Britain nor in the major industrial nations of Europe. Nowhere else, for instance, has the injunction been developed into a primary weapon against labor as it has in the United States. And it is in connection with the injunction, by the way, that Mr. Witte has performed one of his greatest services. The issuance and effect of injunctions is a highly technical subject; it has been dealt with more fully in other works, such as Frankfurter and Greene's *The Labor Injunction*, but nowhere else has the reviewer run across a more lucid explanation from the standpoint of the average lay reader.

Mr. Witte has no startlingly original thesis to present; he is a scientific compiler, not a propagandist. But as such, there are few people in the country better fitted than he to write such a book as this. Mr. Witte has specialized in labor problems for some twenty years or so, and as Director of the Wisconsin Legislative Reference Library he has been in a strategic position to collect the pertinent and noteworthy material in the field. One of the most valuable features of the book is the large number of citations to labor cases, particularly those involving the injunction problem. The bibliographical notes and appendices are also helpful to anyone desiring to make

a further study of the subject. In short, the author has brought together a most useful collection of material, much of which is hard to obtain, and has organized and presented it in such a way that the man in the street can read and understand it.

J. H. LEEK.

The University of Oklahoma.

Landman, J. H., *Human Sterilization*. (New York: The Macmillan Company, 1932, pp. xviii, 341.)

Ever since we began keeping records of such matters our social statistics have shown ever-increasing numbers of persons who, on account of inherent mental defect, are unable to care for themselves. The proportion of the population in need of institutional custody grows larger year by year; the expense of maintaining hospitals and asylums has already become a heavy burden. But little imagination is required to foresee a time when mental disease and incompetence will rival war both in number of persons incapacitated and in expenditures for their care.

Some of the increase in the number of defectives can be accounted for without assuming a rapid deterioration of the race. The greater availability of hospitals has brought to light many cases formerly hidden in poorhouses, jails, or homes. Improved methods of diagnosis have revealed previously unsuspected defects in supposedly normal persons. The demands of modern life have imposed strains which earlier generations escaped. But after making due allowance for all of these sources of patients, there is still cause for alarm. Something must be done, we are now beginning to believe, if the world is to be saved from an inundation of incompetents.

The book under review indicates the eugenist's explanation of the increase of defectiveness and describes the recent attempts to apply sterilization as a remedy. Considerable evidence has been accumulated purporting to show that certain prevalent forms of mental disease and defect are inherited. If the conclusion derived from this evidence is correct, the desirability of sterilizing afflicted individuals follows as a matter of course. So drastic a measure, however, may not be hastily undertaken. The favor of public opinion must be won; legislation must be enacted; techniques worked out.

Professor Landman systematically presents the various steps through which the movement for sterilization has gone. The case of the eugenist is fairly given. The most recent statistics on the extent of mental incompetence are tabulated. The history of sterilization legislation is considered in detail, as is also the path of this legislation through the courts, which, as reflectors of ultimate public opinion, determine the validity of the law. In connection with the action of the courts the varying popular notions about sterilization come into view, notions of sterilization as punishment, as a detriment to individual happiness, as a deprivation of natural right. It is apparent that the public has not yet assimilated the findings of genetics. Possibly to educate his readers along this line, the author supplies them with clear expositions of Mendelism and descriptions of the anatomy of the organs of reproduction. He also pictures minutely the various surgical operations utilized as means of sterilization.

The book is interesting, informative, and complete. It will readily supersede other works on the subject, though many readers are sure to be somewhat irritated by the errors in proof-reading and by the author's persistent use of "his or her."

CARL M. ROSENQUIST.

The University of Texas.

Adams, Leonard P., *Agricultural Depression and Farm Relief in England, 1813-'52*. (London: P. S. King and Son, Ltd., 1932, pp. xiv, 178.)

From the viewpoint of all students of economic problems in the United States, as well as those interested in agriculture, this book is highly suggestive. One might delete the dates and change a few distinctive terms and read the history of the depression in agriculture and the attempts at farm relief in the United States from 1914 to 1932. Mr. Adams has given a very careful and well documented account of the situation in agriculture in the period during and following the Napoleonic Wars. First, there was a period of prosperity induced by the high price level which resulted from, among other things, the shutting off of importation by government decrees both English and French. In addition, there was a war demand for food which was purchased with an inflating paper currency and an increasing population. Tending to offset these factors were the developing agricultural and industrial revolutions which were lowering costs of production and increasing the supply of goods. But these were conditions which affected all prices. In the making of agricultural prices Nature herself took a hand. Out of a quarter of a century of war, only two years showed an abundant harvest, and in seven years there were fears of a famine.

Inherent in these conditions were the forces which caused the depression, and by 1816 English farmers were in a near panic. The history of the next thirty-six years is a story of investigating committees and reports on "What is the matter with Agriculture?" (How familiar it sounds!)

All the reports of the investigators agreed that something was radically wrong. There was a fair consensus of opinion as to what was wrong and why. But upon the answer to the question, "What is to be done about it?" English investigators of 1820 to 1850 were no more agreed than the American investigators of 1920 to 1930. The suggestions were protection for agricultural products from international competition in the home market and relief from the burden of taxation, especially the assessments of the Poor Law and the Tithe. Additional suggestions sound like arguments from only yesterday and today: inflation of the currency to raise prices; government purchases of grain to be sold abroad; government loans to individuals who would store grain for future marketing. The difference between that period and ours is that we have tried the latter suggestions while they only discussed them. We might give our predecessors some pointers on how the schemes really work.

None of the government attempts seem to have helped the farmers. The Scottish farmers did not call on Parliament for help but "helped themselves by spending large sums in draining and manuring," adopting the subsoil plow, using machinery to economize labor, and improving the breed of stock. The adoption of this method of self-help by the English farmer seems to have been a considerable factor in the recovery which began about 1850.

Another factor was the partial shutting off of foreign supplies again by the Crimean War and later by the American Civil War. The result of the conditions engendered was a prosperity so great that "the period has been called the 'Golden Age' of English agriculture." He who runs may read the lesson as he will.

RUTH A. ALLEN.

The University of Texas.

Cantor, Nathaniel F., *Crime, Criminals, and Criminal Justice*. (New York: Henry Holt and Company, 1932, pp. xvii, 470.)

Some books are valuable because of their breadth and scope and the perspective they give their readers; others because of the practical manner in which they attack problems; while some depend upon the statement of some startling idea for success. This volume has all three qualities, with each developed to a remarkable degree.

Though the author ostensibly sets out to review the field of criminology, to criticize and to suggest needed changes in the methods employed therein; he does much more; he presents one of the best treatises on methodology in the social sciences, generally, it has been the pleasure of this reviewer to discover. With biting sarcasm he tears into the current concepts of criminologists, and all social scientists through the criminologists, and shows that much of the methodology developed and cherished is ineffective, or worse, actually misleading in the conclusions to which it points.

But he is not merely destructive in his criticisms. He offers his own ideas of the proper methods of research and the uses to which the results of such research should be put; making a strong plea for the utilization of the findings of investigators in the social sciences in the formulation and administration of our legal system.

Finally, he bitterly attacks the existing economic order as the *material*, underlying cause of crime, and asserts that "nothing short of a fundamental reorganization of our economic organization of society will materially lessen crime."

However, he is never didactic or dogmatic. He presents his ideas as *his* ideas, and gives the reader the other opinions on the problem under consideration which have gained currency.

To Cantor, the social sciences are not properly entitled to be called sciences at all, since there are fundamental and irremovable differences between them and the pure sciences, notably the fact that the social sciences cannot escape the historical point of view. Also, the social scientist must not be content with the observation and recording of facts; he must go on to a consideration of their results. "A lover's kiss ends neurologically in muscle and gland, but socially in babies and infant wear," as he remarks. Thus the criminologist is prevented from doing more than discovering trends which may or may not prove extendable into the future, since social acts are under no compulsion to repeat themselves as are physical facts. But the criminologists, he believes, are too often content with shrewd guesses or "soapy generalizations," so that "it may be critically maintained that not one single generalization has been formulated on the basis of fact in terms of which the tendency to commit certain crimes can be predicted or the conditions generating them controlled."

Similarly, he digs into the various phases of the field of criminology, criminal procedure and penology, ending with his conclusion that the fundamental difficulty with our society, that is, the fundamental cause of criminality, is to be found in our economic organization; though he admits that the economic factors are so interwoven with other elements that it is impossible to extricate them, and that it is the conservatism of the lower-income groups which has made America so safe for industrial democracy.

HARRY E. MOORE.

The University of Texas.

Hill, Norman L., *International Administration*. (New York: McGraw-Hill Book Company, 1931, pp. xi, 292.)

Though less developed than national administrative machinery, international administrative machinery has, nevertheless, assumed a position of commanding importance. It is less spectacular than are the more dramatic international organizations, such as the Assembly of the League, devoted largely to political matters, but in the long run it may be fundamentally more important, just as in national government the field of administration is receiving increasing attention. When one realizes that the states of the world have, during the past century, gradually built up a large number of administrative organizations, most of them working quietly but effectively, in some special field or another, such as health, agriculture, postal service, and a host of others, and that these organizations differ one from another in methods of operation, functions, powers, personnel, supervision, and conventional basis, he is impressed with the fact that here is a vast field in which the world is experimenting as never before and is meeting with heartening success. Certain selected phases of these experiments form the subject matter of the present volume.

For the most part, this volume, giving "administration" a rather broad definition so as not to exclude important agencies exercising less direct control, treats of the methods and powers of international administrative organizations considered collectively and not individually. Hence no individual agency receives exhaustive treatment. Having selected certain topics for study, the author then surveys the whole array of agencies and draws therefrom the main outlines of his picture. Details from specific agencies are then used for purposes of comparison and illustration. Thus the book might have been styled comparative international administration. It opens with a chapter on the rôle of international administration. Following this come nine chapters devoted to control through or by international commissions, national agents, and the League of Nations; mandatory administration; the conventional basis of international administration; the personnel of administrative bodies; and the supervision of bureaus and commissions. We find also a carefully selected bibliography, appendices containing fine illustrative documents, and an index.

The author has done a timely and excellent piece of work. Considering the variety and complexity of the material with which he had to work, as well as the limitation of space, he has given us a carefully drawn picture of the more fundamental principles, methods, and powers characterizing international administration of the present day.

CHARLES A. TIMM.

The University of Texas.

Johnson, E. A. J., *American Economic Thought in the Seventeenth Century*. (London: P. S. King & Son, 1932, pp. xi, 292.)

American historians of economic thought have almost if not wholly neglected the colonial era of our history, in striking contrast to the historians of political and religious thought. The colonial era was, of course, extremely rich in political and religious issues, thinking, and writing. It doubtless has been assumed that it was comparatively barren of economic questions and theorizing. Professor Johnson has proved this assumption false, and has rendered a notable service by searching out, collecting, analyzing, and interpreting colonial references to economic questions and colonial contributions to economic philosophy. His task was beyond doubt a difficult one, for colonial economic thought was typically medieval, and medieval economics is never kept separate from medieval ethics, politics, and philosophy. References to economic matters, therefore, are widely scattered in the colonial literature and generally buried in treatises and tracts ostensibly devoted to other subjects. Professor Johnson's book is evidence that he has performed this difficult task admirably and adequately.

Though colonial economic literature is surprisingly extensive, as indicated by Professor Johnson's copious bibliography and elaborate documentation, the colonists made no original contributions to economic theory. In general their theories equally with their manufactured goods were imported from England. Such differences as occur are usually only differences of emphasis, due to differences of interest between the mother country and the colonists. These differences are most striking in the English and the American theories of colonization, as is to be expected. For the remainder we find the usual medieval testing of economic institutions, policies and practices by ethical standards and the usual attempt to arrange economic life in conformity with a preconceived and religious pattern. Professor Johnson describes how conditions and circumstances in the New World made this latter attempt impossible of attainment.

Professor Johnson has produced a scholarly and thorough piece of work in a virtually untouched field. He is due the thanks of all students of American economic theory.

E. E. HALE.

The University of Texas.

Castenholz, William B., *The Control of Distribution Costs and Sales*. (New York: Harper & Bros., 1930, pp. viii, 194.)

It is only in comparatively recent times that certified public accountants have directed their attention to the problems of distribution, notwithstanding the fact that much of their work has had to do with the materials for such study. Naturally, the changing economic conditions faced by their clients are responsible, to a large extent, for increased attention to the analysis of data pertaining to distribution and the cost of placing merchandise into the hands of the consumers.

Mr. Castenholz has made a substantial contribution to the literature upon the subject, from the standpoint of an accountant, and has succeeded in presenting his suggestions in a manner which should appeal to the practical business mind as well as to the student.

He successfully points out the main features of the problem and directs attention to some of the ways and means of utilizing the accounting records

of business for the study of the costs of distribution. He calls attention to the fact that his methods of analysis are mainly those long recognized and applied in manufacturing or cost accounting. The merits of these methods have many times been demonstrated in all lines of business. The idea of standards of performance has been clearly illustrated by him, and the need of standards, if one would get the most out of the analysis of distribution costs, is emphasized. The application of budgets to distribution costs as well as sales performances, is likewise given its properly important place.

Profit and loss statements and balance sheets usually fail to tell the entire story of a fiscal period, and this work proposes such analyses as will give facts pertaining to relative profits between salesmen, commodities or classes of commodities sold; comparisons of different methods of distributing commodities and even the relative profitableness of certain markets in different geographic areas.

Needless to say, the work must not be assumed to be all-comprehensive in respect to the problems of which it treats. It is, however, one which should serve as a basis for still more exhaustive study of the materials of accountancy as a means of interpreting the provoking problems of distribution.

The subject of the control of distribution costs and sales becomes a fruitful one, and should be a profitable one, in this day when sales do not take care of themselves, as was true to a large extent a couple of decades ago when nearly all business thought was directed to cutting the cost of manufacturing.

GEORGE F. HERDE.

Federal Trade Commission, Washington, D.C.

Friedrich, Carl Joachim, and Cole, Taylor, *Responsible Bureaucracy*. (Cambridge: Harvard University Press, 1932, pp. xvi, 93.)

Professor Friedrich, firm in the conviction that most writings in the realm of comparative government leave a good deal lacking to those interested as students rather than as casual readers in that realm, has projected a series of "Studies in Systematic Political Science and Comparative Government." Each study will deal with a significant concept in "systematic political science," and will be at once a discussion of the concept as such and a case analysis of its practical aspects. The study presently at hand, the first of the series, is concerned with the concept bureaucracy, and the case chosen for analysis is the Swiss civil service.

Briefly, the authors hypothesize the essential harmony between bureaucracy and responsible government. In an ably executed chapter they examine "The Systematic Concept of Bureaucracy," finding that an organized bureaucracy is characterized by a determinate distribution of offices or functions, and hierarchical organization, and the recognition of sound principles in personnel management. Then they proceed to an investigation of the Swiss civil service, with special reference to the existence and operation of the features characteristic of that bureaucracy. The case analysis concludes with a chapter which treats of such fundamental personnel problems as employee organization, representation or participation, and the right to strike, and the study with a comment concerning bureaucracy and democracy wherein the authors generalize their findings for the student of administration.

The nature of the study made possible a fairly definite assignment of duties between the authors, Professor Friedrich assuming responsibility for

the general discussion and for interpretation and Professor Cole for the case analysis. Both phases of the work are done in commendable fashion, the case adequately, the discussion logically and soundly and (whether Professor Friedrich will consider it a compliment or not) with much of plain common sense. And withal, the two authors have succeeded in realizing the advantages of coöperative research while eliminating most of the disadvantages; indeed, the argument unfolds so smoothly that there is little, outside the prefatory acknowledgments, which speaks of joint authorship. The study is well planned and well executed, and leads one to wish success and long life for Professor Friedrich's projected series.

ROSCOE C. MARTIN.

The University of Texas.

- (1) *Conferencias y Discursos* (1930), 102p.; (2) *Discursos* (1929), 195p.; (3) *Discursos Parlamentarios* (1926), 115p.; (4) *Política y Literatura* (1931), 260p. By Alfonso Francisco Ramirez. Mexico: 4 de Guillermo Prieto 55.

These four publications by the national deputy from the state of Oaxaca throw considerable light (1) upon current economic and social questions in Mexico of today, and (2) upon the technique of politics and propaganda in that country. Señor Ramirez is an eloquent speaker and an efficient propagandist. His interests reach beyond those of politics into literature, for he is an essayist and a poet of no mean distinction. *Conferences and Discourses* opens with a commencement address on The Cultivation of the Will, which shows familiarity with modern philosophy. There are also addresses on Labor Day, Old Age Pensions, Lindbergh, and the aviator Carranza. *Discourses* contains important addresses on the land laws and free schools, as well as several on constitutional and legal questions and a considerable number of literary and commemorative speeches. The *Parliamentary Addresses* is composed primarily of constitutional and legal pieces, but also contains brief analyses of the theories of Duguit, Machiavelli, Henri Barbusse, F. L. Ramos, and other writers on social questions. *Politics and Literature* is the most ambitious of all of the volumes listed here, and the most important. There are articles on leaders, nationalism, capital and capitalism, political realism, political theory, extravagant legislation, the Indian, lawyers, tourists, the politician, those who govern, etc., etc., as well as sketches of such public men as Ortiz Rubio, Vasconcelos, and Calles. Three essays on the labor code and four on the penal code are particularly informative.

L. L. BERNARD.

Washington University.

BOOK NOTES

R. R. Ergang's *Herder and the Foundations of German Nationalism* (New York: Columbia University Press, 1931, pp. 288), is another attempt to set out some of the contributing factors in the development of German nationalism, which is, at best, a difficult assignment. As with the nationalisms of most modern countries, that of Germany is particularly baffling and elusive. The methodology employed by the author is to take the written words of Johann Gottfried Herder, categorize and classify them, and add to them the comments of contemporary German literary men of the time. The volume

has most of the earmarks of a doctor's dissertation, with unpardonably voluminous direct quotations from Herder's works. However, it is splendidly documented, and reveals a conversance with the literature of that period. The chief contribution that Ergang makes is the restatement of Herder's concept of nationality and of his plans for the development of one humanitarian nationalism to supplant the popular cosmopolitanism then enduring. I feel as though the author has not sufficiently distinguished between the *Volkkultur* of Herder and the *Deutschland-Über-Alles* ideal. To Herder the development of an appreciation for things German, literary, philological, and philosophical represented an internal renovation and not a peripheral projection. Apparently, modern nationalisms, with but few exceptions, are obsessed with the latter concept. Ergang makes extravagant claims as to Herder's influence upon the German awakening of the early Nineteenth Century. His influence upon Wolfgang Goethe is a matter of historical record, but the question persists as to whether or not the opposition to foreign modes and influences was not produced by factors other than the leadership of one or even many intellectuals.

C. A. M. E.

The material published in *Indian Excerpts from the Memorias for the History of the Province of Texas*, by Father Morfi, translated and edited by Frederick C. Chabot and translation revised by Carlos E. Castañeda (Privately printed: The Naylor Printing Company, San Antonio, Texas, 1932, pp. xxii, 85), was taken from the unpublished manuscript *Memorias* of Fray Juan Agustín Morfi, written in the years between 1778 and 1783. The editor and translator, who has been working for several years on the local history of San Antonio, has carefully annotated the excerpts and written an introduction that make this publication the most complete and scholarly collection of data on Texas Indians known to the writer. It will no doubt prove an indispensable and invaluable handbook on Texas Indians, the detailed information gathered by Morfi being well supplemented by copious notes by the editor, who has brought together under one cover all the available information on the subject. The book is artistically presented; the format is the characteristic one of old Spanish books, with double columns, marginal notes, and beautiful capital letters; and the thirteen illustrations are by the Elson Company of Massachusetts. It is an artistic presentation of a scholarly study of Texas Indians that should appeal both to book lovers and students of aboriginal culture.

J. L. M.

In *Prostitution and Its Repression in New York City, 1900-1931* (New York: Columbia University Press, 1932, pp. 164), Willoughby Cyrus Waterman presents a history of the attempt to eliminate vice in America's largest city by means of repressive legislation. The author finds significant changes in the methods of prostitution during the period, notably the all but complete disappearance of street solicitation and the closing of the notorious resorts of the red light district. That these results were secured through diligent police activity, assisted by increasingly stringent laws and spurred on by the insistent demands of well organized groups of citizens, appears to be a defensible conclusion. In spite of this apparent success the author is not willing to state that prostitution has actually decreased. He believes it possible that adjustments to the law and to the technique of the police may enable

organized vice to flourish as before. The efforts of the law enforcement agencies of New York City appear, therefore, to be but one more indecisive skirmish in the centuries-old war against the oldest profession. The study unintentionally but inevitably suggests that if we really wish to solve this troublesome problem it is time to try some means of control other than force.

C. M. R.

Among the many books, pamphlets, and articles poured forth in recent years upon the subject of limitation of armament, probably the best, from the point of view of the American position, is Benjamin H. Williams' *The United States and Disarmament* (New York: Whittlesey House, McGraw-Hill Book Company, 1931, pp. xi, 361). The volume is divided into four parts, these being the sea power theory of history, American naval needs, the naval conferences, and coöperation with the League of Nations. The Washington Naval Treaty of 1922, the London Naval Treaty of 1930, and a summary of the draft convention drawn up by the Preparatory Commission make up the appendices. There is an adequate index. Professor Williams' greatest contributions in this volume lie in his attack upon the doctrine of Mahan, his presentation of data tending to show that the age of sea power is probably about to be ended by another age of land power, his excellent summary of the work of the conferences, and his clear exposition of the place the United States should occupy in the effort to reduce armaments. It is his belief that French nationalism is the greatest obstacle to agreement, and that the United States, by reason of its strength and geographic position, can well afford to go a long way toward disarmament, especially since it has an enormous stake in world peace and world economic recovery.

C. T.

Eliot Jones' and Truman C. Bingham's *Principles of Public Utilities* (New York: Macmillan, 1931, pp. xiv, 799), is a textbook, and an excellent one, for university classes studying public utility control and regulation. Special treatments are rare that cover all of the vital aspects of the subject. This one succeeds therein in splendid fashion. Its description of the general organization of public utility companies, the relation of the companies to the states or cities from which they have received franchises, and the engineering problems involved in the matters of rates and service, are all very clearly set forth. Too many times writers on this subject fail, *in toto* or in part, to develop sufficiently this latter important feature of the whole problem. It includes recent material, which is all-important in a subject still in a decidedly mercurial stage of development. On the question of public ownership, the authors have pursued a course designed for safety. It is true that they enumerate the various points, pro and con, but they have refrained from decisive personal statement upon that contentious question. Indeed, they might easily have gleaned from the recent report of the Federal Trade Commission much more damaging evidence on the practices which privately-owned public utility operators have pursued in recent years in regard to public relations. Still, I suppose that those materials, being as yet controversial, are scarcely legitimate for the making of textbooks. By and large, the book is the best now available for a comprehensive study of public utilities.

C. A. M. E.

The third edition of Professor Holcombe's *State Government in the United States* (New York: The Macmillan Company, 1931, pp. xxii, 703), has recently been published, with additions that increase the already great value of this work on state government in the United States. Instead of a selected bibliography on state government that appeared as Appendix G in the Revised Edition of 1926, this new edition contains an excellent list of references, carefully selected, at the end of each chapter. These references, it should be said, contain the latest books and articles on the subject matter covered by each chapter. In addition, two excellent chapters have been added to make the study of state government more complete. One, entitled "The Peoples of the States," points out the significance of the growth of population and the influence of the frontier and of the city upon state government; while the other, with the heading "Democracy and Administration," surveys local government in its relation to state administration and the problem of the Politician versus the Bureaucrat as outlined in the reforms proposed by the Model State Constitution. As a rather comprehensive and thoughtful survey of state government today, this book has no superior.

J. A. B.

One of the most interesting studies in state government to appear in some time is the doctoral dissertation of Charles J. Rohr, entitled *The Governor of Maryland* (Baltimore: Johns Hopkins Press, Studies in Historical and Political Science, 1932, pp. 164). The story of the evolution of the governor's office from colonial days to the present has been related in a general way by many authors—but few have restricted themselves to any particular state. Here Mr. Rohr presents a constitutional historical study of Maryland's chief executive. The work is very readable and, judging from the footnotes which appear at the bottom of each page, the author has given his reader a thorough and learned discussion of his subject. At times the treatment may appear repetitious, but only in order that clearness be not sacrificed. The author has ably demonstrated the value of such a work, and others of like nature might profitably be undertaken with reference to many states.

S. A. M.

F. G. Crawford, in the preface to his *State Government* (New York: Henry Holt and Company, 1931, pp. x, 533), states that "The purpose of this book is to present a picture of state government in all its relationships," and in line with this idea he seeks to show the interdependence of all the branches of state government. On the whole the method of approach is the traditional one, with the possible exception that the greater part of the book is devoted to the various phases of state administration. Of the twenty-eight chapters in the book, thirteen deal with special fields of administration or state control over local administration. The general treatment of the various subjects is rather well done, and the ground covered is adequate for a survey of the important administrative position occupied by the states in our federal system of government. Two chapters at the beginning of the book on "National and State Relations" and "Interstate Relations" are well placed, making a fitting introduction to the study of state governments.

J. A. B.

Of interest to students of the history of economic thought is the publication by Columbia University Press for the Facsimile Text Society of John Wheeler's *A Treatise of Commerce* (New York: Columbia University Press,

1931). This reprint is reproduced from the London edition of 1601. There is a short preface by George Burton Hotchkiss describing the original editions of the *Treatise* and giving what little is known of the life of John Wheeler. Wheeler was secretary of the Society of Merchant Adventurers of England, and his book is a typically mercantilist and propagandist defense of the Society. Wheeler himself says that his book was "written principally for the better information of those who doubt the necessariness of the said societie in the State of the Realme of England." Throughout 126 pages he elaborates the manifold advantages of the trading company in furthering the wealth and power of Great Britain, quite in the manner of modern apologists of more or less unregulated monopoly.

E. E. H.

Subtitled his work, "A Critical Analysis of Some Attempts to Establish Sociology as an Independent Science," Theodore Abel in *Systematic Sociology in Germany* (Columbia University Press, 1929, pp. 169) gives American students the main features of the writings of four modern German sociologists: Simmel, Vierkandt, von Wiese, and Max Weber. The points chosen for discussion are well selected and adequately clarified. The book will serve a useful purpose in bringing some of the best products of German sociological thought within reach of those to whom the original works are not available.

C. M. R.